

1907-021

Chancery causes: Alfred B. Cramer Co] vs A.J. Howell

Nansemond Co (Suffolk)

Holland, Rawles, Harris, Miteer, Babb, Everett, Hare, Gordon,
Crocher, Daughtrey, Norfleet, Hardy, Cramer, Joyner, Gay,
Barnes, Jones

Folder 1 of 3

A B Cramer Co.
 against - } In Chancery
 A J Howell & A A Holland.
 Decree of Court is A J Howell judgt vs
 A B Cramer Co. for \$72.00. with interest
 from March 13th 1906 till paid.

And

A J Howell judgt vs A A. Holland
 for \$62.50 Damages and Costs,

Clerk	Sums Inj. 50 - Copy 25.	Sums Inj 50 Copy 25 =	\$ 1.50
Recl.	18. atty 10. Dock 18. Bill 15 =		61
Rules	1.00. Bond 75. Rec. 25 - Copy 25 - ent Return 35		2.60
3 Exh.	1.95. 3 Ans. 45 - Cross Bill 15 =		2.55
Decree	75. Tax Costs Filing papers 65 Dock 50 =		1.90
Fi Fa			58
Clerk's Costs	paid by R W written Feby 17th,		\$ 9.74
Out Tax	paid March 1st 1907		1.50
Sheriff			2.00
Attorney			15.00
			\$ 28.24
SS Phleger Costs for Plaintiff			114.00
" " " " Defendant			86.40
			\$ 228.64

Costs

Crocker & Co.
To } Timber Seed
A. Q. Cramer Co.

J. U. BURGESS.
ATTORNEY-AT-LAW,
SUFFOLK, VA.

1903

Lumber Contract

A. J. Howell &
Perry Howell.

A. A. Halland

Admitted to record
Feb. 24, 1903.Recorded in D. B. 54
Page 348.1904 May 5
Examined and verified.
M. Lawrence D.C.

have seen

Tax	1.00
Fee	1.25
Paid	\$2.25

Virginia: In the Clerk's Office of Monroe County Court the 24th day of February, 1903:
This Contract was presented and with the certificate annexed, admitted to record.
Weste; R. R. Smith Clerk
By M. Lawrence D.C.

WHEREAS there are two deeds of trust on said lands, one in favor of Z. T. Holland in which W. T. Holland is trustee, and the other in favor of John A. Gum in which E. E. Holland is trustee, and,

WHEREAS the said John A. Gum has assigned the bond secured by the last mentioned deed of trust to Job G. Holland, the said Z. T. Holland, Job G. Holland and E. E. Holland, trustee, become parties here to and sign this deed for the sole purpose of releasing the timber hereby conveyed from the lien of said deeds of trust.

This Deed, Made this 6th day of Feb'y 1903, by and between A. J. Howell and Penny Howell of the County of Nausemound, in the State of Virginia, grantors and parties of the first part, and A. J. Howell grantees and parties of the second part—

WITNESSETH, That for and in consideration of the premises, and the sum of \$600.00, cash in hand paid at and before the signing and sealing of this deed, the receipt of which is hereby acknowledged, and in further consideration of the sum of \$....., to be paid to said grantors by the grantees, when the timber hereinafter to be described is begun to be cut, and the remainder of \$....., to be paid when the timber is one-half cut, the said party of the first part does hereby grant, bargain and sell unto the said parties of the second part, with general warranty, the following property, situated in the County of..... to wit: All of the standing ^{Pine} timber down to 10 inches on the stump 15 inches from the ground, at the time of cutting, on that certain tract of land known as the ^{Howells two home place & property as the tract purchased from A. J. Howell & the late} place, bounded by the lands of

Dr. J. S. Howell, John Jones, Chas. Parker & others
and By lands of Alesha Howell and James Copeland, James Howell & others
and By the land of James Howell, Simpson, Howell, Ross Rawles, John Rawles & others

and containing 155 acres, more or less, it being the same land and the timber thereon, referred to in a certain contract dated..... day of....., 190....., executed by the grantors herein and now in the possession of said grantees.

It is covenanted and agreed between the parties that the said grantee, ^{his} heirs and assigns shall have a right-of-way through and across the said tract of land above described, and any other lands owned by said parties of the first part, for the purpose of cutting and removing the timber cut from said land by said party.... of the second part, or ^{his} agents or assigns, or for the purpose of cutting or removing timber from any other tract of land purchased or controlled by the said party.... of the second part.

And said parties of the first part also grant to said party.... of the second part the right to erect all tracks, machinery, buildings, improvements and fixtures to be used for the objects and purposes set out in the clause next hereinbefore, and also to remove the same at the pleasure of said party.... of the second part.

And said parties of the first part hereby grant to said party.... of the second part, and any person or body corporate ^{his} lawful successors or assigns, the right-of-way through said tract of land and all lands owned by said parties of the first part for a permanent railway to be owned and operated by any person or body corporate to whom said party.... of the second part shall assign the right hereby specially granted. And also the right to cut such small trees for ties or other construction along the right-of-way as may be required.

And said parties of the first part hereby covenant with said party.... of the second part and ^{his} assigns to pay all levies, taxes, assessments and dues upon the land and timber herein described during the continuance of this contract.

And said parties of the first part hereby grant, accord and assure unto said party.... of the second part and ^{his} assigns the full term of ^{three} years within which to cut and remove the timber hereby conveyed, said term to commence from ^{date of contract 3 years more by paying simple interest} the time said party.... of the second part begin to manufacture said timber into wood or lumber.

It is also further agreed that should any damage result to parties of first part by reason of the carelessness or negligence of parties of the second part in the conduct of their business, same shall be ascertained by two disinterested parties, one selected by each of the parties hereto, and upon their failure to agree, those two shall call in a third party, and their decision shall be final.

WITNESS the following signatures and seals:

STATE OF Virginia }
COUNTY OF Nausemound } ss.

I, Elisha Joyner, a Notary Public for the county of Nausemound, in the State of Virginia, do hereby certify that A. J. Howell and Penny Howell, his wife, whose names are signed to the writing above, bearing date 6th day of Feb'y, 1903, personally appeared before me this day and acknowledged the same before me in my county aforesaid.

Witness my hand this 6th day of Feb'y, 1903.

my term of office expires July 1903

Deed from
Adolf Halland
wife
to
Crocker Bros
Feby 23
1903

"Whereas the deeds from the other
grantors [exclusive of Elisha Halland]
herein named grant to the
said Adolf Halland & his assigns
the full term of three years
within which to cut & remove
the timber thereby conveyed, said
term to begin on the 6th day
of Feby, 1903 & also, in the
event that the said Adolf
or his assigns shall be unable
to cut and remove the timber
hereby conveyed within the three
years that he or they
shall have still further
time to cut & remove
said timber as they may
require not exceeding
two years from the expiration
of the three years aforesaid;
provided the said Adolf or
his assigns shall pay to the
said grantors a sum equal
to six per cent. per annum
on the purchase price
for the additional term required."

STEWARTS, J. H. Gruckley and F. A. Crocker, partners trading as Crocker & Brother, of Suffolk, Virginia, are possessed of certain standing timber in Holt Neck, Magisterial District of Hansemond County, Virginia, which was conveyed to them by A. A. Holland and wife by deed duly recorded in the Clerk's Office of Hansemond County in D. R. No. 54, page 372, which said tracts of timber are bounded and described as follows:

First. All that certain tract of standing timber comprising two hundred and eleven acres, more or less, which was purchased by A. A. Holland from David Milteer and others and conveyed to him by ~~the~~ deed duly recorded in Clerk's Office of Hansemond County in D. R. No. 54, pages 351-354, which said deed conveyed all the standing pine timber down to ten inches on the stump fifteen inches from the ground at the time of cutting on that ~~the~~ tract of land known as the "old Lee tract" which is bounded by the land of A. J. Peel, Dempsey Howell, Elisha Holland and others.

Second. That certain tract of standing timber comprising sixty-five acres, more or less, which was conveyed to the said A. A. Holland by Elisha Holland by deed duly recorded in the Clerk's Office of Hansemond County in D. R. No. 54, page 356, which said deed conveyed all the standing pine timber down to ten inches on the stump fifteen inches from the ground at the time of cutting on that certain tract of land on which the said Elisha Holland now resides, which is bounded by the lands of J. K. Holland, A. J. Farrell, Eson Holland, T. F. Milteer and others.

Third: Those two certain tracts of standing timber containing one hundred and seventy-one acres, more or less, which were purchased by A. A. Holland from J. A.

Rawles and wife by deed duly recorded in the Clerk's Office of Mansfield County, in D. B. No. 54, page 352, which said deed conveyed all the standing timber down to twelve inches on the stump fifteen inches from the ground at the time of cutting on those certain tracts of land known as the "J. T. Rawles place". The said two tracts being bounded as follows: One on the North by John Parker, on the East by James Howell, and the old Lee land, on the South by W. F. Darden and the old Ben Howell tract, and on the West by Robert Rawles. The second tract being bounded on the North by Robert Rawles, on the East by Ben Howell, on the South by Mrs. Ella Darden and Hardy, and on the West by Carr Beale.

Fourth. That certain tract of standing timber containing sixty and one half acres, more or less, which was conveyed to the said A. A. Holland by Jas. T. Gordon and wife by deed duly recorded in Clerk's Office of Mansfield County in D. B. No. 54, page 350, which said deed conveyed all the standing pine timber down to ten inches on the stump fifteen inches from the ground at the time of cutting on that certain tract of land known as the "Gordon part of the old Lee tract of land". It being bounded by the lands of Elisha B. Ware, J. D. Harris, A. J. Howell and others.

Fifth. Those two certain tracts of standing timber comprising ninety acres, more or less, which were conveyed to the said A. A. Holland by J. K. Holland and wife by deed duly recorded in Clerk's Office of Mansfield County in D. B. No. 54, page 354, which said deed conveyed all the standing pine timber down to twelve inches on the stump fifteen inches from the ground at the time of cutting on those certain tracts of land known as the "J. K. Holland home place". The two said tracts of timber being bounded as follows: 1st. beginning at a certain pine tree at the Southeast corner of the home field fence and running in a straight

line along Dempsey Howell's line to George Brown's and John Holland's land, thence in a Southward course around John Holland's fence to a dead pine, thence in a straight line North to a green pine on the avenue, thence East down avenue and around fence to the point of beginning. The land heredescribed being all the land owned by the said grantors South of said avenue. Second. beginning at a certain crooked pine (which is split) at a fence about two hundred yards North of avenue, and running in a straight line to a split bay tree, thence in a straight line South to a certain split Holly tree, thence in the same direction to a split Sour wood tree near the corner of a ditch, thence in a Northwardly direction along Jack Jones, J. B. Ellis and back to the corner of the fence in an Eastwardly course.

6th. These three certain tracts of standing timber comprising one hundred and fifty-five acres, more or less, which are located on A. J. Howell's two home places and on a part of the old Lee place, which was purchased from A. A. Holland. It being the same timber which was conveyed to A. A. Holland by A. J. Howell and others by deed duly recorded in the Clerk's Office of Hammond County, Ga. V. 3, No. 54, page 348, which said deed conveyed all the standing pine timber down to ten inches on the stump fifteen inches from the ground at the time of cutting on the following described terms. 1st. That certain tract containing about twenty acres bounded by the lands of Dr. J. G. Holland, Jack Jones, Charles Parker and others. 2nd. That tract containing about twenty-seven acres, bounded by the land of Elisha Holland, James Copeland, James Howell and others. 3rd. That certain tract of land containing about one hundred acres, which is bounded as follows: Beginning at an iron post on the Lee road in the line of James Howell and bounded by the lands of James Howell, Dempsey Darden, Robert

Rawles, John Rawles and others. It being the timber on the tract formerly belonging to Luke and Jones and deeded by them to W. M. Howell on the 3th day of February, 1903.

7th. That certain tract of standing timber comprising fifty acres, more or less, which was conveyed to the said A. A. Holland by J. L. Harris and wife by deed duly recorded in the Clerk's Office of Mansfield County in D. B. No. 54, page 354, which said deed conveyed all the standing pine timber down to ten inches on the stump fifteen inches from the ground at the time of cutting on that certain tract of land on which the said J. L. Harris now resides and which is bounded by the lands of Jack Wright, Titus Walden, Dempsey Darden, J. A. Catchin, deceased, and the old Lee tract.

8th. That certain tract of standing timber comprising forty-five acres, more or less, which was purchased from Lucy C. Holland and Anthony Holland, her husband, by deed duly recorded in Clerk's Office of Mansfield County in D. B. No. 54, page 365, which said deed conveyed all the standing pine timber down to twelve inches on the stump fifteen inches from the ground at the time of cutting on that certain tract of land on which the said grantors now reside. It being bounded by the lands of D. H. Wilkery, Milda Holland, George Brown and Ezra Holland with the exception of the piece of timber near George Brown's field. The timber on the tract of land excepted will not exceed five thousand feet.

AND WHEREAS, the said Crocker & Brother are possessed of certain other tracts of standing timber as follows:

1st. That certain tract of timber containing thirty acres, more or less, which was conveyed to the said Crocker & Brother by James O. Everett by deed duly recorded in the Clerk's Office of Mansfield County in D. B. No. 56, page 406, which said deed conveyed all the standing pine timber

down to ten inches on the stump fifteen inches from the ground at the time of cutting on that certain tract of land known as the "James O. Everett tract" and being a part of the "old Lee Farm" and bounded by the land of D. H. Milteer, Elisha T. Hare and the old "Wright tract."

2nd. That certain tract of standing timber containing thirty acres, more or less, which was conveyed to the said Crocker & Brother by Elisha T. Hare and wife by deed duly recorded in the Clerk's Office of Essex County in N. E. No. 56, page 405, which said deed conveyed all the standing pine timber down to ten inches on the stump fifteen inches from the ground at the time of cutting on that certain tract of land known as the "Elisha Hare part of the old Lee Farm" and bounded by the lands of James O. Everett, D. H. Milteer and the old Wright tract.

AND WHEREAS, all of said deeds hereinabove mentioned granted and conveyed to the said grantees therein mentioned, their heirs and assigns, rights-of-way through and across the tracts of land upon which the timber therein described is situated and also any other lands owned by the grantors of the original deeds for the purpose of cutting and removing the timber conveyed by said deeds as well as for the purpose of cutting and removing any other timber that may be purchased or controlled by the said grantees, their heirs or assigns, and,

WHEREAS, said deeds grant the right to erect all tracks, machinery, buildings, improvements and fixtures to be used for the objects and purposes set out in the clause next hereinabove and also the right to remove the same at the pleasure of the said grantees, and,

WHEREAS, the deeds hereinabove mentioned grant and convey to the said grantees, or their assigns, a right-of-way through all lands owned by the said grantors named

in the original deed for a permanent railway to be owned and operated by any person or body corporate to whom the said grantee or grantees shall assign the right thereby specially granted and also the right to cut such small trees for ties or other construction along the right-of-way as may be required, and,

WHEREAS, the grantors in the original deeds hereinabove mentioned covenant to pay all levies, taxes, assessments and dues upon the said land and timber therein described during the continuance of the contract set forth in said deeds, and,

WHEREAS, all of said deeds grant and convey to the grantees therein named the full term of three years beginning the 6th day of February, 1903, in which to cut and remove the timber hereby conveyed and also, if desired by the said grantee or grantees, or their assigns, an additional two years beginning on the 6th day of February, 1904, in which to cut and remove said timber provided said

grantee or grantees, or their assigns, shall pay to the ^{Except Elisha Holland, who has already been paid,} said grantors a sum equal to six per cent. per annum on the purchase price named in said original deeds for the additional time required, and,

WHEREAS, the said Crocker & Brother have agreed to sell to The A. B. Cramer Company, a corporation, all their right, title and interest in said standing timber together with the rights, privileges and easements thereto appertaining for no consideration hereinafter named, NOW, THEREFORE, THIS DEED, made this 11th day of May, in the year 1905, by and between James H. Crocker and Jane Crocker, his wife, and D. D. Crocker and Adorea D. Crocker, his wife, all of Suffolk, Virginia, parties of the first part, and The A. B. Cramer Company, a corporation duly chartered under the laws of the State of Virginia, party of the second part, WITNESSETH: That for and in consideration of the

sum of four thousand, seven hundred and seventy-one and 70/100 dollars, said sum to be paid as follows: One thousand dollars cash, the receipt whereof is hereby acknowledged, and three thousand, seven hundred and seventy-one and 70/100 dollars to be paid within twelve months in quarterly installments with interest from date (said deferred payments being evidenced by a note, bearing even date with this deed, for three thousand, seven hundred and seventy-one and 70/100 dollars, executed by the said the A. D. Crocker Company, payable to Crocker Brother at the Farmers Bank of Portland ninety days after date, which said note may be renewed and renewed as hereinabove set forth), the said parties of the first part do grant unto the said party of the second part with general warranty all their right, title and interest in and to the tracts of timber hereinabove described together with all the rights, privileges and easements granted in the deeds hereinabove mentioned, reference to which deeds is hereby made for the same in detail.

The true intent and purpose of this deed being to convey the interest of the first parties in said timber and land unto the second party and to substitute in their place and subordinate to all their right, title and interest therein.

But it is expressly covenanted and agreed by and between the parties to this deed that the title to the timber hereinabove mentioned is expressly reserved by said parties of the first part until the entire purchase price is paid.

Witness the following signatures and seals.

J. E. Crocker (SEAL).

Jane Crocker (SEAL).

B. D. Crocker (SEAL).

Adina Brinkley Crocker (SEAL).

STATE OF VIRGINIA,
To-wit:

County of Hanover.

I, _____, a Notary Public for the
County aforesaid, do certify that James M. Crocker and
Jane Crocker, his wife, and B. D. Crocker and _____
Crocker, his wife, whose names are signed to the writing
hereto annexed, bearing date on the 11th day of May,
1905, have acknowledged the same before me in my County
aforesaid.

My term of office expires on the _____ day of _____
_____, 190____.

Given under my hand this _____ day of May, 1905.

Notary Public.

D. S. PHLEGAR,
SHORTHAND REPORTER AND NOTARY PUBLIC,
COMMISSIONER IN CHANCERY,
532-533 LAW BUILDING,
BELL PHONE 504.
NORFOLK, VA.

November 22nd, 1907.

Mr. R. W. Withers,
Suffolk, Virginia,

My Dear Sir:-

I see from the papers that the case of Howell v. A.B. Cramer Co. is being argued. My fee was not noted at the foot of the depositions. Will you please note it so that it may be taxed as a part of the costs, as follows:

Plaintiff's costs:

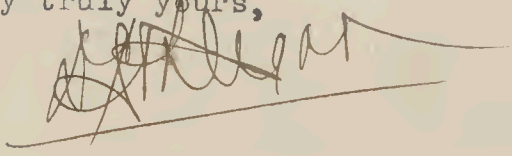
Depositions in chief	\$88.30
Carbon of defendant's	15.90
Rebuttal	9.80
	<u>\$114.00</u>
By cash	<u>85.00</u>
	<u>\$29.00</u>

Defendants' Costs:

Carbon of plaintiff's	\$22.10
Defendant's depos.	62.70
Carbon of rebuttal	1.60
	<u>\$86.40</u>
By cash	<u>86.40</u>

In the meantime, if you can get your client to ante a part of this fee, it will be very acceptable.

Very truly yours,



P-H

D. S. Hilegar's
Cape

114.00

86.40

~~8~~ 200.40

ROBERT W. WITHERS,
ATTORNEY AT LAW,
PRACTICES IN STATE AND FEDERAL COURTS

SUFFOLK, VA., NOV. 25, 1907.

Capt. A. P. Gomer,
Suffolk, Va.

Dear Captain:-

Please note the enclosed bill for taking depositions in the case of Howell vs. Cramer Company. \$114.⁰⁰

yours very truly,

Robert W. Withers

RWW/K

*Please tax this bill as
part of the costs in this
case. Rwd*

Letter from
Rutherford

IN THE CIRCUIT COURT OF NANSEMOND COUNTY , VIRGINIA.

Second July Rules, 1906.

A. B. CRAMER COMPANY, INC.....Plaintiff.

vs.

A. J. HOWELL AND A. A. HOLLAND.....Defendants.

MEMORANDUM.

TO ROBERT R. SMITH, CLERK.

Issue summons directed to A. A. Holland to answer the allegations set forth in the answer of A. J. Howell to the bill of complaint of the A. B. Cramer Company, Incorporated, which is prayed to be treated as a cross bill and which makes the said A. A. Holland a new party defendant in said suit. Returnable first August Rules, 1906.

Robt. R. Smith, p.d.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON *A. I. Holland*

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the *First* Monday in *August 1906*, to answer *a Cross* Bill in Chancery, exhibited against *him* in the said Court by *A. J. Howell at the suit of the A. B. Cramer Company Incorporated against said A. J. Howell,*

And have then and there this summons.

Witness, R. R. SMITH, Clerk of our said Court, at his office, this *20th* day of *August*, 190*6*, in the 13*th* year of the Commonwealth.

A copy—Teste:

CLERK. }

Teste:

CLERK.

R. R. Smith
By A. J. Howell deputy clerk

Not finding A. A. Holland at his usual place
of abode I executed the within summons this the
4th day of August 1906 by delivering a true copy
of the within to My Mammie Holland a female
whom I found there over the age of sixteen years
and wife of said A. A. Holland,

~~W. A. A. Baker~~ W. A. Baker
By R. E. Boylston

R. W. Withers, p. q.

A. B. Cramer Co
Mammie Holland

vs.

IN CHANCERY.

A. J. Howell and
A. A. Holland

1906

August Rules.

First Monday.

NANSEMOND CIRCUIT COURT.

Process Book No. 3

Page 17

In the Circuit Court of Mansemond County, in vacation,
on the 6th day of July, 1906.

Alfred B. Cramer Company, Incorporated

vs.

A. J. Howell.

On motion of the plaintiff, by counsel, and for good cause shown, an injunction is awarded it to enjoin and restrain the defendant, A. J. Howell, his attorneys, agents and employees, from interfering with the plaintiff, in any way, in cutting and removing the standing timber purchased from him by A. A. Holland by deed dated the 6th day of February, 1903, provided the same is cut and removed within two (2) years from the 6th day of February 1906.

But the plaintiff is not to have the benefit of this order until it shall enter into bond, with sufficient security, in the penalty of One thousand (\$1000) Dollars payable to the defendant and conditioned to pay all such costs as may be awarded against it and all such damages as may be incurred in case this injunction shall be dissolved.

All of which is hereby certified to the Clerk of this Court to be entered in the chancery order book.

Robert R. Prentis.

A Copy,

Teste:

R. R. Smith Clerk

I, R. R. Smith, Clerk of the Circuit Court for the County of Nensemond, do hereby certify that the bond required by the within order of Injunction has been given with security deemed sufficient by me.

Teste:

R R Smith Clerk

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON

A. J. Howell

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 *July, 1906*, to answer

a Bill in Chancery, exhibited against *him* in the said Court by *Alfred B. Cramer Company Incorporated,*

And have then and there this summons.

Witness, R. R. SMITH, Clerk of our said Court, at his office, this *7th* day of *July*, 190*6*, in the 13*th* year of the Commonwealth.

A copy—Teste :

Teste :

_____, CLERK. }

R. R. Smith, CLERK.

E. E. Holland, p. q.

Alfred Blaine
Company, Incorporated.

vs. }

IN CHANCERY.

A. J. Howell

1906

July

Rules.

Third

Monday.

NANSEMOND CIRCUIT COURT.

Process Book No. 3

Page 16

Executed this the 10th day of July 1906. A. J. Howell not being found at his usual place of abode, I delivered a true copy of the within summons, with a copy of indictment, to the wife of A. J. Howell, a female member of the family whom I found there lived the age of 16 years, and to whom I explained the purport of same.

Attest
By John W. Smith
Clerk

To the Clerk of the Circuit
Court of Nassau County Co.
Alfred B. Cramer Company, Inc.

vs

A. J. Howell

Done on summons in a hearing
at Rules on 3rd Monday in Aug
1906.

E. E. Halland per

Know All Men by These Presents, That we, Alfred B. Cramer
Company, Incorporated and Alfred B. Cramer

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of
One Thousand DOLLARS,

to the payment whereof, well and truly to be made to the Commonwealth of Virginia, we bind ourselves, 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 Commonwealth arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of said State.

Sealed with our seals, and dated this 7th day of July in the year of our Lord one thousand nine hundred and six, and in the 131st year of the Commonwealth.

~~In Testimony Whereof, the said~~ has
~~hereto set his hand and seal, and the said~~

~~has caused its corporate name to be hereto signed, and its~~
~~corporate seal to be hereto affixed, this~~ day of ~~July~~ in the year of our
Lord, one thousand nine hundred and ~~six~~, and in the ~~131st~~ year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, ^{That} ~~that if the above bound~~
Whereas, an Injunction has been sued out in the chancery cause of Alfred B. Cramer Company, Incorporated against A. J. Howell enjoining and restraining the said A. J. Howell his Agents, Attorneys and employees from interfering with the said Company in any way in cutting and removing the standing timber purchased from A. J. Howell by A. A. Holland by deed dated the 6th day of February, 1903, provided the same is cut and removed within two years from the 6th day of February, 1906; and, whereas the said Company cannot have the benefit of the order until it enters into bond with sufficient security in the penalty of One Thousand Dollars payable and conditioned as prescribed in said order: Now therefore, if the said Alfred B. Cramer Company, Incorporated, shall pay all such costs and damages as may be awarded against it and all such damages as may be incurred in case the injunction shall be dissolved, then this bond shall be null and void but otherwise to remain in full force and virtue.



Alfred B. Cramer Co. Inc.



By A. B. Cramer, Pres't.



Alfred B. Cramer



Attest:

C. P. Cramer, Sec.



VIRGINIA:

In the Clerk's Office of the Circuit Court of Nansemond County, on the 7th day of July, 1906:

The above bond was executed and acknowledged before me by the obligors to the same (the security justifying), and ordered to be recorded.

A Copy, Teste:

Teste: R. R. Smith, Clerk,

By S. M. Lawrence, D. C.

Alfred B. Cramer Co. Inc.
To { Injunction Bond.
The Commonwealth.

1906.
July 7th.

Recorded in Official
Bond Book No. 1.
Page 486.

A
Copy.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

IN VACATION, JULY 29th, 1907.

A. B. CRAMER COMPANY.....COMPLAINANT.

VS.

A. J. HOWELL ET ALS.....DEFENDANTS.

DECREE.

BY consent of parties, by counsel, in vacation this chancery cause is submitted to the Judge of this court for such decision and decree therein in vacation as might be made in term.

It appearing to the Judge of this court that the parties have consented to the above decree it is hereby certified and ordered that the above decree be entered in the chancery order book.

To the Clerk of the Circuit Court of Nansemond County.

James L. McShore
Judge.

E. E. Holland vs
J. B. Kramer Co
vs J. Chancery
at J. Holland
Entered July 29, 1907
James L. McNamee

we consent to the within decree.

Wm. H. Nichols
att'y for A. J. Howell

E. E. Holland vs
J. B. Kramer Co
att'y for J. B. Kramer
Co. at J. E. Holland

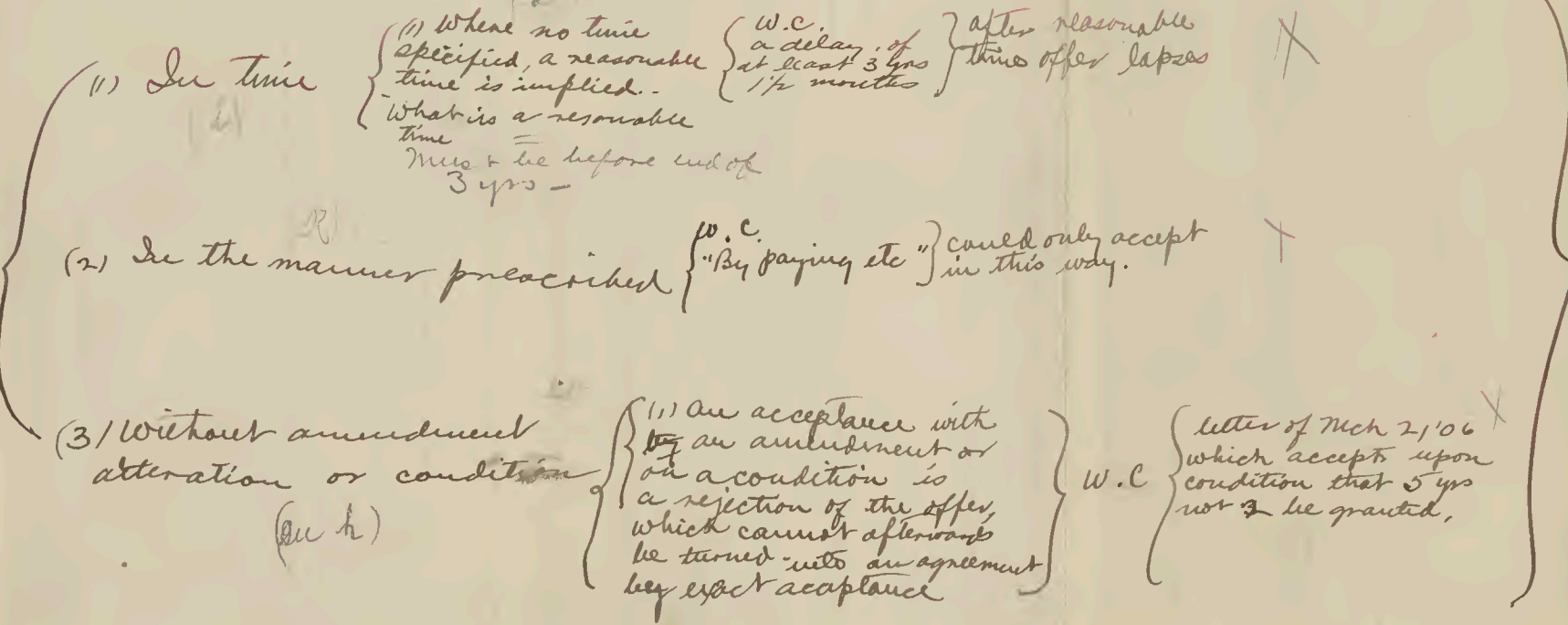
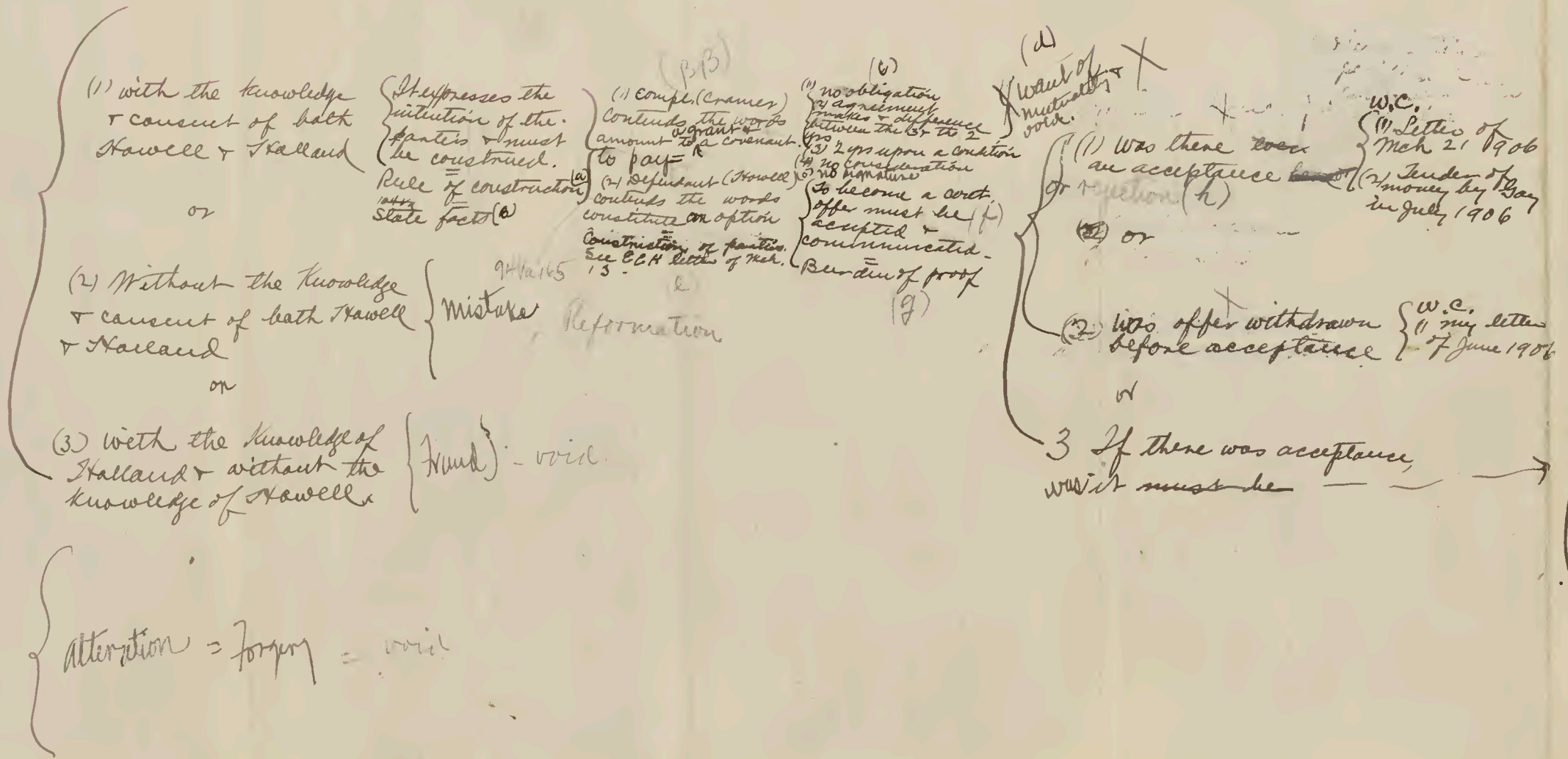
Entered in Chancery
Order Book No. 4
Page 171.

The words "and two more years, by paying lawful interest", at the time of signing the contract, either

were

or

were not in the instrument



Conclusion

Complainant has had all the time he bargained for & his rights under the contract are ended.
Howell keeps both the timber & the money.

Cronology

- 1903, Feb-6 Continued execution
- 1905, Dec. 15- Fraud discovered
- 1906 Jan. or Feb. Howell complains of fraud to J. J. Reed.
- 1906 March 13, E.E. Howland's letter ^{to Howell} asking for an extension of 5 years
- 1906 May, E.E. Howland visits Howell and presses for an extension of 5 years. Howell promises to give him an answer later
- 1906 June 30, Howell notifies Cramer that he will cut the timber and denies Cramer's interest in it.
- 1906 July 3, E.E. Howland & Gay visit Howell and offer to pay interest, which is refused.
- 1906 July 6, Suit instituted by Cramer and injunction granted.

status of parties prior to execution of contract.

What happened during execution of contract.

Cross-examine -

Answer -

Evidence of the parties -

Location of saw mill -

Howell claims timber sold down to 10
cubits -

Was there any fraud in the preparation of
the contract -

Had authorities -

9472 636

14

2270 845

EDWARD E. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VA.

BOTH PHONES,

BOOTHE BUILDING.

Suffolk, Va., March 13, 1906.

Exhibit B.
HSP 20

J. A. Rawls, Esq.,

Holland, Va.

Dear Sir :-

On Feb. 6th, 1903, you sold the standing timber on your place to Mr. A. A. Holland, and gave him three (3) years within which to cut the timber, with the privilege of an additional two (2) years, by paying 6% interest on the purchase price.

This timber has since been purchased by Mr. A. B. Cramer. Mr. Cramer desires to know whether or not he can make some satisfactory arrangement with you for a further extension of three (3) years, making in all five (5) years from Feb. 6th, 1906, within which to cut this timber. Of course, if no extension is granted he **proposes** to cut the timber right away, but it will be inconvenient for him to do so, and on this account he is willing to pay you a reasonable compensation for the additional extension. I shall be obliged if you will let me hear from you promptly about this.

Yours very truly,

E. E. Holland

June 30th, 1906.

The A. B. Cramer Company,
Suffolk, Va.

Gentlemen:-

WE beg herewith to notify you that it is our purpose to cut and market the timber which you seem to claim was sold by us to A. A. Holland and by him and others to you. We understand that you attempt to claim some interest in this lumber which we deny. This is to notify you that on the 10th day of July we will begin to cut and market this timber for ourselves.

Yours very truly,

Exit you

April 25/1906

Bill for Mr Mathews Gardner House	
amt of YD Mathews Bill	5609
amt to D Edwards Bill	3774
Batcher + balloons for 6000 Shingles	2400
freight to W R Wagner on Shingles	300
Bill for house to D Edwards	556
J D Saunders for LIME	130
amt for Halling lumber	600
amt Halling Shingles	125
H of trip to Suffolk with Wagon	600
amt paid to YD R Webb	2500
	<u>\$16594</u>

(Signed) _____

the Brandy sold or removed, at Distillery No. _____, carried

and that said account is, to the best of my knowledge and belief, correct and true.

(Signed) _____



This Deed, Made this 6th day of Feby in the
year one thousand nine hundred and three between

A. J. Howree and Penny Howree his wife

of Nansemond County Va, parties of the first part, and

Sam Hardy (Chosen trustee)
of Holland Va, part y of the second part—

Witnesseth: That said parties of the first part do grant unto the said part y of
the second part, with general warranty, the following property, to wit: All that

Certain tract of land in Holy Nick
District, Nansemond County Virginia
Containing one hundred acres more
or less, and described as follows

Beginning at an iron post on the Lee
Road in the line of James Howree, and
bounded by the lands of James Howree,
Dempsey Darden, Robert Rawles, and
others, and being the same land
Conveyed to said A. J. Howree by
W. H. Howree, and Mary Elisabeth Howree
by deed bearing date Feby 6th 1903

In Trust, to secure to A. A. Howell or his
assigns the payment of the sum of

Eighty seven & 00/100 dollars, evidenced
by bond of even date executed by the
Said A. J. Howell and Penny Howell

In the event that default shall be made in the payment of the said debt, principal or any instal-
ment of interest, when due and payable, then the Trustee, on being required so to do by the
Said beneficiary
executors, administrators, or assigns, shall sell the property hereby conveyed.

And it is covenanted and agreed between the parties aforesaid, that in case of a sale the same
shall be made after first advertising the time, place and terms thereof for

Fifteen days previous to
such sale

and upon the following terms, to wit: for cash as to so much of the proceeds as may be necessary to
defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees
for drawing and recording this deed, if then unpaid, and to discharge the amount of money then pay-
able upon the said debt; and if there be any residue of said purchase money the same shall be made
payable at such time, and secured in such manner, as the said parties of the first part their
executors, administrators or assigns shall prescribe and direct, or in case of their failure to
give such direction, at such time and in such manner as the said Trustee shall think fit.

The said parties of the first part covenant to pay all taxes, assessments, dues and
charges upon the said property hereby conveyed so long as they or their heirs or
assigns shall hold the same; and further covenant and agree to keep the buildings on the prop-
erty hereby conveyed insured for the full amount of \$ for the further protection of the said
 or assigns; and in the event of
failure to do so, then the Trustee, or the beneficiary under this deed, may effect or renew such insurance
from time to time, so long as the said debt, or any part thereof, remains unpaid; and the insurance
premiums shall constitute a part of the lien created by this deed, to be paid out of the proceeds of the
property, if sold, or to be recoverable by all the remedies in law or equity by which the debt aforesaid
may be recoverable.

If no default shall be made in the payment of the said debt or insurance premiums, then, upon the
request of the parties of the first part, a good and sufficient deed of release shall be executed to
them at their own proper cost and charges.

Witness the following signatures and seal

A. J. Howell 
Penny ^{her} Howell 



STATE OF VIRGINIA,
County of Hammond } To wit:
I, Elihu Joyner, a Notary Public
for the county aforesaid, in the State of Virginia, do certify that A. J. Howell
and Penny Howell
whose names are signed to the writing hereunto annexed, bearing date the 6th day of
Feb, 1903, have acknowledged the same before me in my
county aforesaid.

Given under my hand this 6th day of Feb, 1903

Elihu Joyner no
my term of office expires July 1903
MEMO.—To be acknowledged before a Justice, Notary Public, or Commissioner in Chancery.

Deed of Trust.

A. Howell & wife
To

Sam Hardy

Trustee for *A. A. Howell*

Admitted to Record this *4th* day of
March, 190*3*.

Recorded D. B. *55* Page *63*

1907
Oct 28 Examined and verified,
M. W. Harris Clerk.

By....., D. C.

\$87⁵⁰

Tax.....\$ *.50*

Fee.....\$ *1.25*

\$ *1.75*

COUNTY OF *Nansemond*, To WIT:

In the office of the Clerk of the County Court for the County of *Nansemond*

the *4th* day of *March* 190*3*, this deed was presented, and, with

the certificate.....annexed, admitted to record.

Teste:

R. P. Smith, Clerk,

By *G. M. Lawrence*, D. C.

Whereas there is a deed of trust on the land hereinabove described in which said deed E. E. Holland is trustee for John A. Gun, and, Whereas the said John A. Gun has assigned the bond secured by said deed of trust to J. E. Vincent, the said E. E. Holland, trustee, and ~~John~~ E. Vincent become parties hereto and sign this deed for the sole purpose of releasing the timber hereby conveyed from the lien of said deed of trust.

State of Virginia

County of Hansemond, to wit:-

I, J. P. Lee a notary public for the county aforesaid
in the state of Virginia do hereby certify that E.E. Holland, Trustee,
whose name is signed to the writing hereto annexed has acknowledged
the same before me in my county aforesaid.

My term of office expires on the 14th day of May, 1905.

Given under my hand this 23rd. day of February, 1903.

J. P. Lee

Notary Public

This Deed, Made this 6th day of Feb'y 1903, by and between David H. Milteer and Corine B. Milteer of the County of Nausemond, in the State of Virginia, grantors and parties of the first part, and A. A. Hecceand grantees and parties of the second part—

WITNESSETH, That for and in consideration of the premises, and the sum of \$2,250.00, cash in hand paid at and before the signing and sealing of this deed, the receipt of which is hereby acknowledged, and in further consideration of the sum of \$....., to be paid to said grantors by the grantees, when the timber hereinafter to be described is begun to be cut, and the remainder of \$....., to be paid when the timber is one-half cut, the said party of the first part does hereby grant, bargain and sell unto the said parties of the second part, with general warranty, the following property, situated in the County of..... to wit: All of the standing Pine timber down to 1.0 inches on the stump 1.5 inches from the ground, at the time of cutting, on that certain tract of land known as the Old Lee tract place, bounded by the lands of

A. Peeler, Simpsey, Howell, Anthony, J. Hecceand, Elisha Hecceand and others

and containing 2.11 acres, more or less, it being the same land and the timber thereon, referred to in a certain contract dated..... day of....., 190....., executed by the grantors herein and now in the possession of said grantees.

It is covenanted and agreed between the parties that the said grantee, his heirs and assigns shall have a right-of-way through and across the said tract of land above described, and any other lands owned by said parties of the first part, for the purpose of cutting and removing the timber cut from said land by said party.... of the second part, or his agents or assigns, or for the purpose of cutting or removing timber from any other tract of land purchased or controlled by the said party.... of the second part.

And said parties of the first part also grant to said party.... of the second part the right to erect all tracks, machinery, buildings, improvements and fixtures to be used for the objects and purposes set out in the clause next hereinbefore, and also to remove the same at the pleasure of said party.... of the second part.

And said parties of the first part hereby grant to said party.... of the second part, and any person or body corporate, his lawful successors or assigns, the right-of-way through said tract of land and all lands owned by said parties of the first part for a permanent railway to be owned and operated by any person or body corporate to whom said party.... of the second part shall assign the right hereby specially granted. And also the right to cut such small trees for ties or other construction along the right-of-way as may be required.

And said parties of the first part hereby covenant with said party.... of the second part and his assigns to pay all levies, taxes, assessments and dues upon the land and timber herein described during the continuance of this contract.

And said parties of the first part hereby grant, accord and assure unto said party.... of the second part and his assigns the full term of three years within which to cut and remove the timber hereby conveyed, said term to commence from the time said party.... of the second part begin to manufacture said timber into wood or lumber. years if needed by paying 6% on or purchase price

It is also further agreed that should any damage result to parties of first part by reason of the carelessness or negligence of parties of the second part in the conduct of their business, same shall be ascertained by two disinterested parties, one selected by each of the parties hereto, and upon their failure to agree, those two shall call in a third party, and their decision shall be final.

WITNESS the following signatures and seals:

STATE OF Virginia
COUNTY OF Nausemond } ss.

I, Elisha Joyner, Notary Public for the County of Nausemond, in the State of Virginia, do hereby certify that D. H. Milteer and Corine B. Milteer his wife, those names are signed to the writing above, bearing date 6th day of Feb'y 1903, personally appeared before me this day and acknowledged the same before me in my county aforesaid.

Witness my hand this 6th day of Feb'y 1903

D. H. Milteer
Corine B. Milteer
E. E. Hecceand Justice
Notary Public

Elisha Joyner No.

my term of office expires July 1903

State of Virginia
County of Hansemond, to-wit:

I S.E. Everett a Notary Public for the County
aforesaid in the State of Virginia do
hereby certify that J.E. Muesent whose
name is signed to the within above
has acknowledged the same before
me in my County aforesaid

My term of office expires July 10 1903
Given under my hand this 7th day
February 1903 — J.E. Everett,
N.P.

51
Lumber Contract
David H. Milteer
Normine Milteer

A.A. Heecond

Admitted to Record
Feby. 24, 1903.

Recorded in D.Q. 54
Page 351.

1904 May 5
Examined & verified
S.M. Lawrence, D.C.

above items

Tax .50
Fee 1.25
Paid \$1.75

Virginia:
In the Clerk's Office of Hanse-
mond County Court the 24th. day of
February, 1903:

This Contract was presented, and
with the certificates annexed, ad-
mitted to record.

Teste: R.R. Smith Clerk
By S.M. Lawrence D.C.

This Deed, Made this 21st day of March 1903, by and between Elisha P. Hare and Emma Hare of the County of Nansemond, in the State of Virginia, grantors and parties of the first part, and J. A. Crocker and B. B. Crocker grantees and parties of the second part—

WITNESSETH, That for and in consideration of the premises, and the sum of \$ 50.00, cash in hand paid at and before the signing and sealing of this deed, the receipt of which is hereby acknowledged, and in further consideration of the sum of \$ 50.00, to be paid to said grantors by the grantees, when the timber hereinafter to be described is begun to be cut, and the remainder of \$ 50.00, to be paid when the timber is one half cut, the said party of the first part does hereby grant, bargain and sell unto the said parties of the second part, with general warranty, the following property, situated in the County of Nansemond to wit: All of the standing Pine timber down to 10 inches on the stump 1.5 inches from the ground, at the time of cutting, on that certain tract of land known as the Elisha Hare, or part of old Dr place, bounded by the lands of

James O. Everett, D. H. Milles, and the old Jack Wright tract

and containing 30 acres, more or less, it being the same land and the timber thereon, referred to in a certain contract dated day of , 190 , executed by the grantors herein and now in the possession of said grantees.

It is covenanted and agreed between the parties that the said grantee, their heirs and assigns shall have a right-of-way through and across the said tract of land above described, and any other lands owned by said parties of the first part, for the purpose of cutting and removing the timber cut from said land by said parties of the second part, or their agents or assigns, or for the purpose of cutting or removing timber from any other tract of land purchased or controlled by the said parties of the second part.

And said parties of the first part also grant to said parties of the second part the right to erect all tracks, machinery, buildings, improvements and fixtures to be used for the objects and purposes set out in the clause next hereinbefore, and also to remove the same at the pleasure of said parties of the second part.

And said parties of the first part hereby grant to said parties of the second part, and any person or body corporate, their lawful successors or assigns, the right-of-way through said tract of land and all lands owned by said parties of the first part for a permanent railway to be owned and operated by any person or body corporate to whom said parties of the second part shall assign the right hereby specially granted. And also the right to cut such small trees for ties or other construction along the right-of-way as may be required.

And said parties of the first part hereby covenant with said parties of the second part and their assigns to pay all levies, taxes, assessments and dues upon the land and timber herein described during the continuance of this contract.

And said parties of the first part hereby grant, accord and assure unto said parties of the second part and their assigns the full term of three years within which to cut and remove the timber hereby conveyed, said term to commence from the time said parties of the second part begin to manufacture said timber into wood or lumber years by paying 6% int on purchase price

It is also further agreed that should any damage result to parties of first part by reason of the carelessness or negligence of parties of the second part in the conduct of their business, same shall be ascertained by two disinterested parties, one selected by each of the parties hereto, and upon their failure to agree, those two shall call in a third party, and their decision shall be final.

WITNESS the following signatures and seals:

E. P. Hare

SEAL

Emma Hare

SEAL

A. Edwards

SEAL

STATE OF Virginia
COUNTY OF Nansemond } ss.

I, Elihu Joyner a Notary Public for the county of Nansemond, in the State of Virginia, do hereby certify that E. P. Hare and Emma Hare his wife, and A. Edwards whose names are signed to the writing above, bearing date 21st day of March, 1903, personally appeared before me this day and acknowledged the same before me in my county aforesaid.

Witness my hand this 21st day of March, 1903.

Elihu Joyner No.

My Commission expires July 1903

Virginia:

In the Clerk's Office of the Circuit Court of Hansemond
County the 5th day of May, 1904:

This Deed (Contract) was presented, and, with the certificate
annexed, admitted to record.

Teste:

A. D. Smith Clerk
By M. Lawrence, Jr.

169

Elisha T. Hare wife

To { Timber Contract

J. D. Crocker & Bro.

Admitted to record
May 5, 1904.

Recorded in D.B.56- page 405-

1904 May 18.

Examined & verified,
M. Lawrence, Jr.

not run

Tax 50
Fee 1.25
\$1.75

This Deed, Made this 12th day of Feb 1903, by and between Leroy C. Holland, in her own right, Anthony J. Holland of the County of Nansemond, in the State of Virginia, grantors and parties of the first part, and A. A. Holland grantees and parties of the second part—

WITNESSETH, That for and in consideration of the premises, and the sum of \$ 47.50, cash in hand paid at and before the signing and sealing of this deed, the receipt of which is hereby acknowledged, and in further consideration of the sum of \$....., to be paid to said grantors by the grantees, when the timber hereinafter to be described is begun to be cut, and the remainder of \$....., to be paid when the timber is one-half cut, the said party of the first part does hereby grant, bargain and sell unto the said parties of the second part, with general warranty, the following property, situated in the County of..... to wit: All of the standing Pine timber down to 12 inches on the stump 15 inches from the ground, at the time of cutting, on that certain tract of land known as the a part of the Old Lee tract place, bounded by the lands of

D. H. Miltes, Elisha Holland, George Brown Exors Holland
This includes all of the timber along the line branch of David H. Miltes, also the piece beginning at the corner of Elisha Holland's piece, and embraces all of the timbered land running out to the path at Exors Holland's gate, which includes all the timber on this land with the exception of the piece on the north side of field near the line of George Brown

and containing 45 acres, more or less, it being the same land and the timber thereon, referred to in a certain contract dated..... day of....., 190....., executed by the grantors herein and now in the possession of said grantees:

It is covenanted and agreed between the parties that the said grantee, his heirs and assigns shall have a right-of-way through and across the said tract of land above described, and any other lands owned by said parties of the first part, for the purpose of cutting and removing the timber cut from said land by said party... of the second part, or his agents or assigns, or for the purpose of cutting or removing timber from any other tract of land purchased or controlled by the said party... of the second part.

And said parties of the first part also grant to said party... of the second part the right to erect all tracks, machinery, buildings, improvements and fixtures to be used for the objects and purposes set out in the clause next hereinbefore, and also to remove the same at the pleasure of said party... of the second part.

And said parties of the first part hereby grant to said party... of the second part, and any person or body corporate, his lawful successors or assigns, the right-of-way through said tract of land and all lands owned by said parties of the first part for a permanent railway to be owned and operated by any person or body corporate to whom said party... of the second part shall assign the right hereby specially granted. And also the right to cut such small trees for ties or other construction along the right-of-way as may be required.

And said parties of the first part hereby covenant with said party... of the second part and his assigns to pay all levies, taxes, assessments and dues upon the land and timber herein described during the continuance of this contract.

And said parties of the first part hereby grant, accord and assure unto said party... of the second part and his assigns the full term of three years within which to cut and remove the timber hereby conveyed, said term to commence from the time said party... of the second part begins to manufacture said timber into wood or lumber, and two more years if needed by second party by paying 10¢

It is also further agreed that should any damage result to parties of first part by reason of the carelessness or negligence of parties of the second part in the conduct of their business, same shall be ascertained by two disinterested parties, one selected by each of the parties hereto, and upon their failure to agree, those two shall call in a third party, and their decision shall be final.

WITNESS the following signatures and seals:

Anthony J. Holland 
Leroy C. Holland 

STATE OF Virginia }
COUNTY OF Nansemond } ss.

I, Elihu Joyner a Notary Public for the county of Nansemond, in the State of Virginia, do hereby certify that Leroy C. Holland and Anthony J. Holland her husband, whose names are signed to the writing above, bearing date 12 day of Feb, 1903, personally appeared before me this 12 day of Feb and acknowledged the same before me in my county aforesaid.

Witness my hand this 12 day of Feb, 1903.

Elihu Joyner do
my term of office expires July 1903

5-7 Lumber Contract
Lucy C. Steeand
Anthony J. Holland

A. A. Steeand

Admitted to record
Feby. 24. 1903.

Recorded in D.B. 54
Page 365

1904 May 5-
Examined and verified
W. Lawrence St.

now seen

Tax .50
Fee 1.25
Paid \$1.75

Virginia:
In the Clerk's Office of Nansemond County
Court the 24th day of February, 1903:
This Contract was presented, and with
the certificate annexed, admitted to record.
Teste: W. R. Smith Clerk
W. Lawrence St.

My term of office expires July 1903

State of Virginia
County of Nansemond, to wit:

I S. E. Tornt a Notary public for the County of Nansemond in the State of Virginia do hereby certify that
H. A. Hollacee Trustee whose name is signed
to the writing above ^{being dated on the 11th day of Feb. 1903} was acknowledged
the same before me in my County
aforesaid. My term of office expires July 20/1903
~~I have signed my hand this 11th day of~~
~~February 1903~~

Virginia: In the Clerk's Office of Nansemond
County Court the 24th. day of February, 1903:
This Contract was presented and with
the certificate annexed admitted to record.
Teste: R. R. Smith Clerk
By S. M. Lawrence De

533.
Lumber Contract
Jos. H. Gordon
to wife
A. A. Hollacee

Admitted to record
Feb. 24th 1903.

Recorded in D.B. 54
Page 360.

1904 May 5
Examined & verified
S. M. Lawrence R.

Tax .50
Fee 1.25
Paid \$1.75

This Deed, Made this 6th day of Feb'y 1903, by and between J. K. Holland and Elisabeth Holland of the County of Nansemond, in the State of Virginia, grantors and parties of the first part, and A. A. Holland grantees and parties of the second part—

WITNESSETH, That for and in consideration of the premises, and the sum of \$ 215⁰⁰ cash in hand paid at and before the signing and sealing of this deed, the receipt of which is hereby acknowledged, and in further consideration of the sum of \$, to be paid to said grantors by the grantees, when the timber hereinafter to be described is begun to be cut, and the remainder of \$, to be paid when the timber is one half cut, the said party of the first part does hereby grant, bargain and sell unto the said parties of the second part, with general warranty, the following property, situated in the County of Nansemond to wit: All of the standing pine timber down to twelve inches on the stump 15 inches from the ground, at the time of cutting, on that certain tract of land known as the J. K. Holland Home place place, bounded by the lands of

1st Beginning at a certain pine tree at South East Corner of his home fences fence and running a straight line along Dempsey Howells line to George Brown Oxen Holland Land, thence westerly South Course around Oxen Holland's fence to a dead pine, thence a straight line north to a green pine on the avenue thence east down avenue and around fence to beginning, containing all
2nd - Beginning at a certain Crooked pine (sloped at fence about 200 yards north of avenue) running a straight line to a sloped bay tree, thence a straight line South to a certain sloped Holly tree, thence same direction to a sloped Saw wood near the corner of a big ditch, then a westerly direction around Jack Jones of J. P. Ellis back to the corner of fence and eastward Course and containing 90 acres, more or less, it being the same land and the timber thereon, referred to in a certain contract dated day of 190, executed by the grantors herein and now in the possession of said grantees.

It is covenanted and agreed between the parties that the said grantee, his heirs and assigns shall have a right-of-way through and across the said tract of land above described, and any other lands owned by said parties of the first part, for the purpose of cutting and removing the timber cut from said land by said party of the second part, or his agents or assigns, or for the purpose of cutting or removing timber from any other tract of land purchased or controlled by the said party of the second part.

And said parties of the first part also grant to said party of the second part the right to erect all tracks, machinery, buildings, improvements and fixtures to be used for the objects and purposes set out in the clause next hereinbefore, and also to remove the same at the pleasure of said party of the second part.

And said parties of the first part hereby grant to said party of the second part, and any person or body corporate, his lawful successors or assigns, the right-of-way through said tract of land and all lands owned by said parties of the first part for a permanent railway to be owned and operated by any person or body corporate to whom said party of the second part shall assign the right hereby specially granted. And also the right to cut such small trees for ties or other construction along the right-of-way as may be required.

And said parties of the first part hereby covenant with said party of the second part and his assigns to pay all levies, taxes, assessments and dues upon the land and timber herein described during the continuance of this contract.

And said parties of the first part hereby grant, accord and assure unto said party of the second part and his assigns the full term of three years within which to cut and remove the timber hereby conveyed, said term to commence from the time said party of the second part begin to manufacture said timber into wood or lumber.

It is also further agreed that should any damage result to parties of first part by reason of the carelessness or negligence of parties of the second part in the conduct of their business, same shall be ascertained by two disinterested parties, one selected by each of the parties hereto, and upon their failure to agree, those two shall call in a third party, and their decision shall be final.

WITNESS the following signatures and seals:

J. K. Holland
Elisabeth Holland
A. A. Holland

STATE OF Virginia }
COUNTY OF Nansemond } ss.

I, Elihu Joyner a Notary Public for the county of Nansemond, in the State of Virginia, do hereby certify that J. K. Holland and Elisabeth Holland his wife, whose names are signed to the writing above, bearing date 6th day of Feb'y 1903, personally appeared before me this day and acknowledged the same before me in my county aforesaid.

Witness my hand this 6th day of Feb'y 1903.

Elihu Joyner
my term of office expires July 1903

delivered said of said owner
by paying 6% inc on down payment

Virginia:

In the Clerk's Office of Hansemond
County Court the 24th day of February 1903:
This Contract was presented and with
the certificate annexed, admitted to
record.

Teste: W. R. Smith Clerk
By C. M. Lawrence C. C.

52 . 1903

Lumber Contract

J. H. Holland and
Elisabeth Holland

A. A. Holland

Admitted to record
February 24, 1903.

Recorded in D. B. 54
Page 354.

1904. May 5
Examined and verified,
C. M. Lawrence, C. C.

have seen

Tax .50
Fee 1.25
Paid \$1.75

This Deed, Made this 21st day of March 1903, by and between James O. Everett of the County of Nansemond, in the State of Virginia, grantors and parties of the first part, and J. A. Crocker & Brother grantees and parties of the second part—

WITNESSETH, That for and in consideration of the premises, and the sum of \$ 85⁰⁰, cash in hand paid at and before the signing and sealing of this deed, the receipt of which is hereby acknowledged, and in further consideration of the sum of \$, to be paid to said grantors by the grantees, when the timber hereinafter to be described is begun to be cut, and the remainder of \$, to be paid when the timber is one-half cut, the said party of the first part does hereby grant, bargain and sell unto the said parties of the second part, with general warranty, the following property, situated in the County of Nansemond to wit: All of the standing Pine timber down to 10 inches on the stump 15 inches from the ground, at the time of cutting, on that certain tract of land known as the James O. Everett being a part of the old Lee place, bounded by the lands of S. H. Milteer, Elisha P. Hare and the old Jack Wright tract

and containing 30 acres, more or less, it being the same land and the timber thereon, referred to in a certain contract dated day of , 190 , executed by the grantors herein and now in the possession of said grantees.

It is covenanted and agreed between the parties that the said grantee, their heirs and assigns shall have a right-of-way through and across the said tract of land above described, and any other lands owned by said parties of the first part, for the purpose of cutting and removing the timber cut from said land by said parties of the second part, or their agents or assigns, or for the purpose of cutting or removing timber from any other tract of land purchased or controlled by the said parties of the second part.

And said parties of the first part also grant to said parties of the second part the right to erect all tracks, machinery, buildings, improvements and fixtures to be used for the objects and purposes set out in the clause next hereinbefore, and also to remove the same at the pleasure of said parties of the second part.

And said parties of the first part hereby grant to said parties of the second part, and any person or body corporate, their lawful successors or assigns, the right-of-way through said tract of land and all lands owned by said parties of the first part for a permanent railway to be owned and operated by any person or body corporate to whom said parties of the second part shall assign the right hereby specially granted. And also the right to cut such small trees for ties or other construction along the right-of-way as may be required.

And said parties of the first part hereby covenant with said parties of the second part and their assigns to pay all levies, taxes, assessments and dues upon the land and timber herein described during the continuance of this contract.

And said parties of the first part hereby grant, accord and assure unto said parties of the second part and their assigns the full term of three years within which to cut and remove the timber hereby conveyed, said term to commence from the time said parties of the second part begin to manufacture said timber into wood or lumber by paying 6% int on purchase price date of this contract and two more years

It is also further agreed that should any damage result to parties of first part by reason of the carelessness or negligence of parties of the second part in the conduct of their business, same shall be ascertained by two disinterested parties, one selected by each of the parties hereto, and upon their failure to agree, those two shall call in a third party, and their decision shall be final.

WITNESS the following signatures and seals:

STATE OF Virginia

COUNTY OF Nansemond

I, Elihu Joyner

a

Notary Public

for the

county of Nansemond

in the State of Virginia

do hereby certify that

James O. Everett

and Job G. Holland

his wife

whose names are signed to the writing above, bearing date 21st day of March

1903

personally appeared before me this day and acknowledged the same before me in my county aforesaid.

Witness my hand this 21st day of March

1903

Elihu Joyner

my commission expires July 1903

Virginia:

In the Clerk's Office of the Circuit Court of Nansemond County
the 5th day of May, 1904:

This Deed (Contract) was presented, and, with the certificate annexed,
admitted to record.

Teste:

*W. P. Smith, Clerk,
By M. Lawrence, etc.*

170

*James O. Everett
D. J. Timber Contract
J. D. Crocker & Bro.*

*Admitted to record
May 5. 1904*

Recorded in D.B. 56- page 406-

*1904 May 18.
Examined and verified,
M. Lawrence, D.C.*

Not seen

*Tax 50
Fee 1.25
\$1.75*

70
35
3/20
23

Alfred B. Cramer Company^{Inc} Complainant
vs.

A. J. Howell and others Defendants

70
23
47

Decree

This cause came on again to be heard on the bill and exhibits of the complainant, the answer of the defendant Howell which is treated as a cross bill as to Augustus A. Holland, the answer to said cross bill by Augustus A. Holland to which said Howell replied generally the depositions of witnesses and was argued by counsel.

On consideration whereof the court doth adjudge, order and decree that the timber contract or deed made between said A. A. Holland and A. J. Howell on the 6th day of February 1903, was, in so far as the extension of the right to cut said timber therein conveyed after February 1906 is concerned, obtained from said Howell by the fraud of said A. A. Holland, but the Court is of opinion that the complainant the A. B. Cramer Company^{Inc} is a bona fide purchaser for value and without notice of said fraud and the said contract and all of it is valid as to it; and it further appearing that under the terms of said contract the said Howell is entitled to interest at 6 per centum per annum on the purchase price expressed in said timber deed it is

adjudged ordered and decreed that the defendant Howell recover of the said A.B. Cramer Company the sum of Seventy Two Dollars with interest thereon from the 13th day of March 1906 till paid and it further appearing to the Court that the timber having been conveyed to an innocent purchaser by said A.A. Holland and it being impossible to rescind said contract in accordance with the prayer of the defendant Howells cross bill, the Court doth further adjudge order and decree that the defendant A.J. Howell recover of the defendant A.A. Holland the sum of Sixty-two & 50/100 Dollars as damages for the fraud committed upon him by said Holland in procuring ^{the} clause in said contract which purported to convey to said Holland an additional term of two years within which to cut the timber from the original tracts of land owned by said Howell, the Court being of opinion that the tract of land known as the Grac-Luke tract was a ~~defendant's~~ ^{defendant's} contract and the said Howell is not entitled to recover any damages by reason of the timber on said tract.

The injunction heretofore issued in this cause is perpetuated.

And the Court doth adjudge order and decree that the defendant

A. J. Howell recover of the defendant
A. A. Holland his costs in this suit
expended.

And there appearing nothing further
to be done in this cause, it is
ordered stricken from the docket.

A.B. Cramer Company ^{Inc}
vs. { Decree

A.J. Howell

Enter this decree

J. F. W.

Nov. 23. 1907.

Entered in Chancery
Order Book No 4
Page 198,

IN THE CIRCUIT COURT OF HANSEMOND COUNTY.

Alfred B. Cramer Company, Incorporated.....Complainant.

versus

A. J. Howell and others.....Defendants.

The answer of Alfred B. Cramer Company, Incorporated, to a cross bill filed against it in the Circuit Court of Hansemond County by A. J. Howell.

This respondent, reserving to *itself* the benefit of all just exceptions to said cross bill, for answer thereto, or to so much thereof as it is advised it is material to answer, answers and says:

(1) That it knows nothing of the charges of fraud or mistake or of any of the transactions between A. J. Howell and A. A. Holland and demands strict proof thereof.

(2) Your respondent denies that it had any notice of any misunderstanding, dispute or charge of fraud or mistake at the time said timber was purchased from J. B. and B. D. Crocker and the purchase price therefor paid.

(3) Your respondent further alleges and charges that it is a bona fide purchaser for value and without knowledge or notice of said fraud or mistake, or means of knowing of such fraud or mistake.

(4) Your respondent alleges that immediately after the expiration of the three years granted in said deed in which to cut said timber that it, the said Alfred B. Cramer Company, Incorporated, notified said Howell that it would avail itself of the extension granted in said deed and thereupon tendered to the said A. J. Howell the interest for two years in accordance with the conditions and terms of his deed.

And now having fully answered this bill this respondent prays to be hence dismissed with its reasonable

costs in this behalf expended.

IN WITNESS WHEREOF, the Alfred B. Cramer

Company, Incorporated, has caused its corporate
name to be hereto signed and its corporate
seal hereto affixed by _____

its _____ attested by

_____, its

_____.

ALFRED B. CRAMER COMPANY, INCORPORATED

STATE OF VIRGINIA,

To-wit:

County of Nansemond.

Alfred B. Cramer, formerly the president of the Alfred B.
Cramer Company, Incorporated, the respondent named in the foregoing
answer being duly sworn says that he was president of the said
Company from _____ to _____

and that the facts and allegations set forth in the foregoing
answer are true, except so far as they are therein stated to be on
information, and that so far as they are therein stated to be
upon information he believes them to be true.

Taken, sworn to and subscribed before me, _____

a Notary Public of and for the County and State aforesaid, in my
County aforesaid, this _____ day of _____, 1907.

B.P.

IN THE CIRCUIT COURT OF HANESMOND COUNTY.

Alfred B. Cramer Company, Incorporated.....Complainant.

versus

A. J. Howell and others.....Defendants.

The answer of A. A. Holland to a cross- bill filed against him and others in the Circuit Court of Hanesmond County by A. J. Howell.

The respondent, reserving to himself the benefit of all just exception to said cross bill, for answer thereto, or to so much thereof as he is advised it is material he should answer, answers and says that it is true that early in the year of 1903 he purchased from said A. J. Howell certain standing timber located in Wolf Neck Magisterial District, of Hanesmond County, Virginia, but ~~that~~ he denounces as false and emphatically denies that said timber was purchased by any false or fraudulent representations or statements relative to the erection or operation of a saw-mill in the neighborhood or by any other false or fraudulent representations or statements whatsoever. It is true that said A. J. Howell agreed to sell to your respondent certain standing timber measuring ten inches on the stump in consideration of \$600.00, but it is not true that said timber was to be cut and removed within three years for it was expressly understood and agreed at the time the contract was made that your respondent should have three years from the 6th day of February, 1903, in which to cut and remove said timber with a further extension of two years in consideration of the payment of six per cent. interest on the purchase price, to-wit: \$36.00. per annum. It is true that on the 6th day of February, 1903, that your respondent with one Elihu Joyner acting as a Notary Public came to the house of said A. J. Howell, but it is untrue and your respondent

emphatically denies that any deed of conveyance or contract was already drawn up and alleges that all of the deeds were drawn in the presence of the said A. J. Howell and from information furnished by him and said deeds were as follows:

1st, a deed from A. A. Holland and wife to A. J. Howell conveying the tract of land on which the greater part of the timber was situated.

2nd, a deed from A. J. Howell and wife to A. A. Holland conveying the standing timber on this tract of land as well as a small tract of timber already owned by said A. J. Howell.

3rd, a deed of trust from A. J. Howell to secure the balance of the purchase price of said land after deducting the purchase price of the timber.

Certified copies of which deeds are herewith filed and prayed to be read as a part of this answer.

Your respondent alleges that all of said deeds were drawn on the 6th day of February, 1902, by Elihu Joyner in his presence and in the presence of A. J. Howell; and that both parties gave the said Joyner the information necessary in order to draw said deeds.

Your respondent emphatically denies and denounces as false *the statement* that the said A. J. Howell was not permitted to read said deeds, or that the same were in any way misread to him, and more particularly denies that said Joyner read the deed conveying said timber down to the point where such deed described the timber as ten inches on the stump or where the said deed granted the right to cut the timber within three years and there stopped saying to the said Howell that the balance of the deed was a mere form.

Your respondent alleges that at the time said deeds were made that said A. J. Howell fully understood the consideration therefor; the time in which the timber was to be cut; and also the dimensions of the timber sold, and brands as false, untrue,

and without foundation, all allegations made by the said Howell to the effect that he was misled or deceived, or that he did not understand the full meaning and purport of the deed signed by him.

Your respondent further denies and denounces as false the allegation that while purchasing a line of timber in the neighborhood of your respondent's land that he in like or similar manner defrauded other persons thereby obtaining from them a large amount of timber or longer time in which to cut it.

Your respondent especially denies that there was any mutual mistake between the parties. Your respondent did know that the deed contained the provision for two years additional time in which to cut said timber and charges that it was the intention of said A. J. Howell to grant the same at the time said deed was executed. Your respondent emphatically denies that said A. J. Howell did not know that additional time beyond three years was granted in the deed conveying said timber, and your respondent further charges that the same was written, in said deed with his knowledge and consent before the same was executed by him. He admits that he has sold the said timber to J. E. and B. D. Crocker and is advised that said J. E. and B. D. Crocker have conveyed the same to A. B. Clearer Company, Incorporated, and for the purposes of this ~~suit~~ suit admits the same to be true. Your respondent alleges that the said J. E. and B. D. Crocker were bona fide purchasers for value and without notice of any fraud or intimation or suggestion of any fraud in any way connected with said contract.

Your respondent denies that said standing timber is now worth \$1900.00. He admits that the market value of timber generally has increased and that this timber is of more value now than it was at the time it was sold, but denies that the timber is now worth anything like the amount named.

All allegations in the cross bill not expressly admitted

are hereby emphatically denied and strict proof of same are at his hands demanded.

And now having fully answered the cross bill the respondent prays to be hence dismissed with his reasonable costs in this behalf expended.

Counsel.

STATE OF VIRGINIA,
To-wit:
County of Hansemond.

A. A. Holland, the respondent named in the foregoing answer being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

Taken, sworn to and subscribed before me, _____
_____, a Notary Public of and for the
County and State aforesaid, in my County aforesaid, this _____
day of _____, 1907.

Notary Public.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

Alfred B. Cramer Company, Incorporated.....Complainant.

versus

A. J. Howell and others.....Defendants .

The answer of Alfred B. Cramer Company, Incorporated, to a cross bill filed against it in the Circuit Court of Nansemond County by A. J. Howell.

This respondent, reserving to itself the benefit of all just exceptions to said cross bill, for answer thereto, or to so much thereof as it is advised it is material to answer, answers and says:

(1) That it knows nothing of the charges of fraud or mistake or of any of the transactions between A. J. Howell and A. A. Holland and demands strict proof thereof.

(2) Your respondent denies that it had any notice of any misunderstanding, dispute or charge of fraud or mistake at the time said timber was purchased from J. E. and B. D. Crocker and the purchase price therefor paid.

(3) Your respondent further alleges and charges that it is a bona fide purchaser for value and without knowledge or notice of said fraud or mistake, or means of knowing of such fraud or mistake.

(4) Your respondent alleges that immediately after the expiration of the three years granted in said deed in which to cut said timber that it, the said Alfred B. Cramer Company, Incorporated, notified said Howell that it would avail itself of the extension granted in said deed and thereupon tendered to the said A. J. Howell the interest for two years in accordance with the conditions and terms of his deed.

And now having fully answered this bill this respondent prays to be hence dismissed with its reasonable

costs in this behalf expended.

IN WITNESS WHEREOF, the Alfred B. Cramer

Company, Incorporated, has caused its corporate

name to be hereto signed and its corporate

seal hereto affixed by Guy I. Buell

its President attested by

_____, its

ALFRED B. CRAMER COMPANY, INCORPORATED

Guy I. Buell Pres.

STATE OF VIRGINIA,

To-wit:

County of Nansemond.

Alfred B. Cramer, formerly the president of the Alfred B. Cramer Company, Incorporated, the respondent named in the foregoing answer being duly sworn says that he was president of the said Company from _____ to _____ and that the facts and allegations set forth in the foregoing answer are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

Taken, sworn to and subscribed before me, _____
a Notary Public of and for the County and State aforesaid, in my
County aforesaid, this _____ day of _____, 1907.

B.P.

Alfred D. Carauer Company
vs Du France
A. J. Howell

Answer of Alfred D.
Carauer Company to
Cross bill filed
by A. J. Howell

J. U. BURGESS,
ATTORNEY-AT-LAW,
SUFFOLK, VA.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

Alfred B. Cramer Company, Incorporated.....Complainant.

versus

A. J. Howell and others.....Defendants.

The answer of A. A. Holland to a cross- bill filed against him and others in the Circuit Court of Nansemond County by A. J. Howell.

The respondent, reserving to himself the benefit of all just exception to said cross bill, for answer thereto, or to so much thereof as he is advised it is material he should answer, answers and says that it is true that early in the year of 1903 he purchased from said A. J. Howell certain standing timber located in Holy Neck Magisterial District, of Nansemond County, Virginia, but ~~that~~ he denounces as false and emphatically denies that said timber was purchased by any false or fraudulent representations or statements relative to the erection or operation of a saw-mill in the neighborhood or by any other false or fraudulent representations or statements whatsoever. It is true that said A. J. Howell agreed to sell to your respondent certain standing timber measuring ten inches on the stump in consideration of \$600.00, but it is not true that said timber was to be cut and removed within three years for it was expressly understood and agreed at the time the contract was made that your respondent should have three years from the 6th day of February, 1903, in which to cut and remove said timber with a further extension of two years in consideration of the payment of six per cent. interest on the purchase price, to-wit: \$36.00. per annum. It is true that on the 6th day of February, 1903, that your respondent with one Elihu Joyner acting as a Notary Public came to the house of said A. J. Howell, but it is untrue and your respondent

emphatically denies that any deed of conveyance or contract was already drawn up and alleges that all of the deeds were drawn in the presence of the said A. J. Howell and from information furnished by him ~~and~~ said deeds were as follows:

1st, a deed from A. A. Holland and wife to A. J. Howell conveying the tract of land on which the greater part of the timber was situated.

2nd, a deed from A. J. Howell and wife to A. A. Holland conveying the standing timber on this tract of land as well as a small tract of timber already owned by said A. J. Howell.

3rd, a deed of trust from A. J. Howell to secure the balance of the purchase price of said land after deducting the purchase price of the timber.

Certified copies of which deeds are herewith filed and prayed to be read as a part of this answer.

Your respondent alleges that all of said deeds were drawn on the 6th day of February, 1903, by Elihu Joyner in his presence and in the presence of A. J. Howell; and that both parties gave the said Joyner the information necessary in order to draw said deeds.

Your ~~Respondent~~ ^{*The statement*} emphatically denies and denounces as false, that the said A. J. Howell was not permitted to read said deeds, or that the same were in any way misread to him, and more particularly denies that said Joyner read the deed conveying said timber down to the point where such deed described the timber as ten inches on the stump or where the said deed granted the right to cut the timber within three years and there stopped saying to the said Howell that the balance of the deed was a mere form.

Your respondent alleges that at the time said deeds were made that said A. J. Howell fully understood the consideration therefor; the time in which the timber was to be cut; and also the dimensions of the timber sold, and brands as false, untrue,

and without foundation, all allegations made by the said Howell to the effect that he was misled or deceived, or that he did not understand the full meaning and purport of the deed signed by him.

Your respondent further ~~denies~~ and denounces as false the allegation that while purchasing a line of timber in the neighborhood of your respondent's land that he in like or similar manner defrauded other persons thereby obtaining from them a large amount of timber or longer time in which to cut it.

Your respondent especially denies that there was any mutual mistake between the parties. Your respondent did know that the deed contained the provision for two years additional time in which to cut said timber and charges that it was the intention of said A. J. Howell to grant the same at the time said deed was executed. Your respondent emphatically denies that said A. J. Howell did not know that additional time beyond three years was granted in the deed conveying said timber, and your respondent further charges that the same was written in said deed with his knowledge and consent before the same was executed by him. He admits that he has sold the said timber to J. E. and B. D. Crocker and is advised that said J. E. and B. D. Crocker have conveyed the same to A. B. Ceamer Company, Incorporated, and for the purposes of this ~~suit~~ suit admits the same to be true. Your respondent alleges that the said J. E. and B. D. Crocker were bona fide purchasers for value and without notice of any ~~fraud~~ fraud or intimation or suggestion of any fraud in any way connected with said contract.

Your respondent denies that said standing timber is now worth \$1900.00. He admits that the market value of timber generally has increased and that this timber is of more value now than it was at the time it was sold, but denies that the timber is now worth anything like the amount named.

All allegations in the cross bill not expressly admitted

are hereby emphatically denied and strict proof of same are at his hands demanded.

And now having fully answered the cross bill the respondent prays to be hance dismissed with his reasonable costs in this behalf expended.

E. E. Holland of
J. H. Bergs
Counsel.

A. A. Holland

STATE OF VIRGINIA,
To-wit:
County of Nansemond.

A. A. Holland, the respondent named in the foregoing answer being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

A. A. Holland

Taken, sworn to and subscribed before me, _____
Julius L. Rawls, a ^{justice of the peace} ~~Notary Public~~ of and for the
County and State aforesaid, in my County aforesaid, this 28
day of Oct, 1907.

Julius L. Rawls J. P.
~~Notary Public.~~

A. D. Brauer Company,
To the Pharmacy
A. J. Nowell

Recd of A. A. Holland
to cross. but filed
by A. J. Nowell

E. E. Nowell
J. U. BURGESS
ATTORNEY-AT-LAW
SUFFOLK, VA.

Oct-31st-1907 Filed
A. J. Nowell

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

Second July Rules, 1906.

A. J. HOWELL.....Defendant.

ads.

ALFRED B. CRAMER COMPANY, INC.....Complainant.

The answer of A. J. Howell to a bill of complaint filed against him in the Circuit Court of Nansemond County by the Alfred B. Cramer Company, Incorporated.

This respondent reserving to himself the benefit of all just exceptions to the said bill of complaint, for answer thereto, or to so much thereof as he is advised that it is material he should answer, answer and says.

Sometime in the early part of the year 1903 A. A. Holland, the complainant's ultimate grantor, came to your respondent and by various false and fraudulent representations and statements relating to his erecting and operating a saw mill in the neighborhood of your respondent's home induced this respondent to agree to sell him certain standing timber, which is the timber in question in this suit. Your respondent avers that he agreed to sell and did sell to the said A. A. Holland all the standing pine timber measuring ten inches on the stump in consideration of Six Hundred (\$600.00) Dollars provided said timber was cut and removed within three years from the date of the contract, to-wit, the 6th day of February, 1903.

Your responseent avers that a few days after the verbal agreement , which was the real and only understanding between the parties, to-wit, on the 6th day of February, 1903, A. A. Holland together with one Elihu Joyner, acting as a Notary Public, came to the home of this respondent with a written paper purporting and representing it to be a deed of conveyance already drawn up whereby to convey the said standing timber to the said A. A. Holland. Your respondent is an aged, uneducated, poor and illiterate colored man and he cannot read with any facility or ease, but taking the said paper writing then and there handed to him by the said A. A. Holland, he, your respondent, undertook to spell out letter by letter in a most painstaking and uncertain way the said deed. Before he had progressed further than the caption in said deed the said Elihu Joyner in the presence of the said A. A. Holland for whom he was then and there acting as an attorney or agent, took the deed from the hands of your respondent at the same time saying that he would read it to your respondent in order to save time as your respondent was reading said deed so slowly. Your respondent delivered the deed to the said Joyner and the said Joyner began then and there to read the same. He, the said Joyner, read or purported to read or pretended to read the said deed through to the point where the said deed grants the timber which is described as ten inches on the stump and where the said deed grants the right and license to cut the said timber within three years and there stopped at the same time saying to your respondent that the balance of the said deed was a mere form, that

it was one of set of deeds and that they were printed and all of them just alike.

Your respondent says that the false and fraudulent statement of the said Joyner misled and deceived your respondent and he was deceived and defrauded in believing, as he had a right to believe, that said deed granted no more than three years in which to cut said timber as was the real agreement between him and the said A. A. Holland. By reason whereof your respondent and his wife, who was also present, then and there executed, acknowledged and delivered the said deed believing it to grant only a license for three years in which to cut the said timber. Your orator avers that the said A. A. Holland was present and heard and saw the said deed read to your respondent as aforesaid and that he did not correct, or attempt to correct, the false impression then and there made and intended to be made upon the mind of your respondent but silently acquiesced and participated in said fraud.

Your respondent positively and unequivocally avers that he did not know that said deed conveyed a longer time than three years in which to cut said timber and that he had agreed to grant no more than three years time to said A. A. Holland in which to cut said timber; that because he supposed said deed to accord with the real agreement between himself and the said Holland he was permissibly and innocently ignorant of its true contents and remained ignorant thereof from that date, to-wit, the 6th day of February, 1903, until long afterwards, to-wit, the winter of 1905, when someone of his friends who had visited the

Clerk's Office reported to him that the deed there recorded purported to convey, on conditions, five years within which to cut said timber.

Your respondent avers that the said A. A. Holland knew of the said fraud and wilfully participated in same and that said fraud was the part of a general plan and scheme of the said Holland to defraud and obtain by covert means your respondent's and his neighbors' standing timber. Your respondent represents that the said Holland before, at and after this time, but while acquiring a line of timber in the neighborhood of your respondent's land in like or similar manner defrauded your respondent's neighbors in much the same way, obtaining from them by false and fraudulent means a greater amount of timber or a longer time within which to cut it .

Your respondent is advised that by reason of the said fraud of the said A. A. Holland he is entitled, upon making restitution of the consideration received by him, to have rescission of the said contract, and your respondent hereby tenders the sum of Six Hundred (\$600.00) Dollars to the said A. A. Holland for that purpose.

Your respondent has charged the said Holland with knowledge of the said fraud by the said Joyner perpetrated upon your respondent, yet should it turn out that the said Holland did not know of the said fraud and did not know of the said two additional years being granted in the said contract then your respondent charges that there has been a mutual mistake as to the

nature of the transaction and that he is entitled to relief in equity therefor.

Your ^{respondent} orator is advised that the true and proper construction of the contract and deed involved in this suit is that said deed grants a license and right to cut said timber therein mentioned for a period of three years from its date, to-wit, the 6th day of February, 1903, and upon a condition precedent, to-wit, the payment of a sum equal to six per centum per annum for two years on the purchase price, on or before the expiration of the said term of three years, it grants a further term of two additional years in which to cut said timber.

Your ^{respondent} orator specifically charges that he did not know that an additional term beyond three years was granted in the deed signed by himself and wife and your orator charges that the same was not in said deed when he signed the same and requires strict proof on the part of said A. A. Holland of such fact.

Your ^{respondent} orator admits that the said A. A. Holland sold the said standing timber to J. E. & B. E. Crocker and that they in turn sold the same to the complainant, but your orator requires strict proof of the complainant that he is a bona fide purchaser for value and without notice of the said fraud or knowledge or means of knowledge of the same or of the condition precedent to the said additional term of two years within which to cut said timber.

Your respondent avers that the said standing timber is now worth Nineteen Hundred (\$1900.00) Dollars, that its increase is due to an increase in the

market value of standing timber and also to the natural growth and increase of the same.

^{not to reflect}
Your orator denies that the said complainant within the said three years undertook to negotiate with this respondent for an additional period of five years from the expiration of the original term within which to cut and remove said timber. Your respondent denies that at any time during the said original term of three years the complainant or any of his agents or representatives tendered or offered to him the sum of Seventy Two (\$72.00) Dollars or any other sum of money wherefore he says that by said failure to perform the condition precedent to the vesting of said additional term of two years within which to cut the said timber, ^{the complainants estate in said timber has terminated .} Your respondent denies that the complainant has the right to pay Seventy Two (\$72.00) Dollars or any other sum to him and become entitled to said additional period of two years within which to cut and remove said timber.

Your respondent prays that this answer may be treated as a cross bill, that A. A. Holland may be made a party defendant to this suit and required to answer the same; that said contract and deed be construed in the manner described by your respondent and the complainant decreed not to have any interest whatsoever in said timber; that the injunction heretofore granted ^{that said contract or deed be declared void and of no effect by reason of said fraud in the factum or mistake in the nature of the contract, or} against your respondent may be dissolved; [^] that by reason of fraud or mistake aforesaid the said agreement be annulled and set aside between your respondent and the said

A. A. Holland, or in the alternative, if the said complainant be shown to be a bona fide purchaser for value and without notice of said fraud or mistake then your respondent prays that the said agreement be affirmed but that damages be awarded your respondent against the said A. A. Holland in the sum of Eleven Hundred (\$1100.00) Dollars with interest from date. And your respondent prays that such other relief general and special may be granted him against the said Holland and the said complainant as he may be entitled to under the circumstances set forth in this answer.

All allegations of the complainants bill not expressly admitted are hereby expressly denied and strict proof of the same is required at his hands.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable cost by him in this behalf expended.

Robt. W. Withers, p.d. a. J. Howell

VIRGINIA,

COUNTY OF NANSEMOND, TO-WIT:

A. J. Howell the respondent named in the foregoing answer being duly sworn says that the facts and the allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

a. J. Howell

Taken, sworn to and subscribed before me Emma King
a Notary Public of and for the county and
State aforesaid, in my county aforesaid, this 3. st
day of July 1906.

Emma King, N.O.

My commission expires Nov. 3- 1908.

A. J. HOWELL

ads.

A. B. Cramer Company, Inc.

Cross Bill.

ANSWER.

ROBT. W. WITHERS,

ATTORNEY AT LAW,

SUFFOLK, VA.

PRACTICING IN ALL COURTS IN
FIRST JUDICIAL CIRCUIT.

JEWELL & COMPANY, PHILADELPHIA.

To the HONORABLE ROBERT R. PRENTIS,

JUDGE OF THE CIRCUIT COURT OF NANSEMOND COUNTY.

Your complainant, the ALFRED B. CRAMER ~~INCORPORATED~~ COMPANY, INCORPORATED, respectfully complaining, shows unto the Court the following case:

That on the 6th day of February, 1903, A. J. Howell and wife conveyed to A. A. Holland the standing timber on certain tracts of land in the County of Nansemond described in a certain deed; said deed was duly recorded in the Clerk's Office of this Court on the 24th day of February, 1903, in D. B. 54, page 348, and a copy of said deed is filed herewith, marked exhibit "A", and asked to be read as a part of this bill.

That on the 23rd day of February, 1903, the said A. A. Holland and his wife conveyed to Crocker & Bro., along with other standing timber, the standing timber described in the said deed aforesaid; said deed from A. A. Holland and wife to J. E. & B. D. Crocker was duly recorded in the Clerk's Office of this Court on the 24th day of February, 1903, in D. B. 54, page 372, and a copy thereof is herewith filed, marked exhibit "B", and prayed to be read as a part of this bill.

That on the 11th day of May, 1905, Crocker & Bro. conveyed the aforesaid standing timber, along with other timber, to your complainant; and a copy of said deed is herewith filed, marked exhibit "C", and prayed to be read as a part of this bill.

That by said last mentioned deed your complainant became the purchaser of said standing timber, without notice or knowledge of any other terms or conditions between the parties than those stated in said deed, and has paid to the said Crocker & Bro. the valuable consideration named in said deed, without notice or knowledge of any other terms or conditions

between the parties than those stated in said deed.

That one of the provisions in said deed from Howell to Holland as aforesaid is as follows: "And said parties of the first part hereby grant, accord and assure unto the said party of the second part and his assigns the full term of three (3) years within which to cut and remove the timber hereby conveyed, said term to commence from date of contract, and two (2) years more, by paying lawful interest." That, according to common usage,["] lawful interest means interest upon the consideration named in said deed, which, for two years, would amount to Seventy-two Dollars (\$72.00).

That the above covenant, assuring unto the purchaser an additional period of two years, upon the payment of six per cent. interest, within which to cut and remove said timber, was considered by your complainant as a valuable right and privilege, and the consideration paid for said timber was larger on account thereof.

That before the expiration of the original term of three years named in said first mentioned deed, your complainant became convinced that it could not, except at very great sacrifice to its interests, cut and remove said timber within said period of three years or within the period of two years in addition thereto, and thereupon undertook to negotiate with the said A. J. Howell for a period of five (5) years from the expiration of the original term within which to cut and remove the said timber.

Soon afterwards your complainant wrote to said Howell, asking him to name the terms upon which he would be willing to give an extension of five years within which to cut and remove said timber, and soon afterwards received a message from Howell that he would consider said matter and let your complainant hear from him.

Not hearing from him promptly, your complainant sent its

representative to see him, for the purpose, if possible, of reaching an agreement. At that time the said Howell promised your complainant that he would see the others and would let your complainant know upon what terms he would agree to said extension.

Later on, your complainant ascertained that some of the adjoining land owners, whose standing timber your complainant had purchased as aforesaid, would not extend ^{the time longer than} the periods named in the contracts as aforesaid, and for that reason made its arrangements to cut all the standing timber owned by it in the section in which the land of the defendant, Howell, is located, and especially the timber on the land of the said Howell as aforesaid. It sent its representative to see said Howell, and the said representative, at that time, tendered to said Howell the sum of Seventy-two Dollars (\$72.00), being the interest on the purchase price named in the deed from said Howell, for two years. Said Howell refused to accept same, although he had not previously denied, but, on the contrary, had practically admitted your complainant's right to the extension of two years within which to cut and remove said timber, upon the payment of said lawful interest.

In none of the previous interviews had with said Howell had he denied this right of your said complainant, nor has he, until within the past few days, ever given to your complainant any notice that he was unwilling to extend said period upon the terms named in his contract.

A few days ago your complainant received a letter from said defendant, Howell, in which it was stated that he would begin, on July 10th, to cut and remove said timber on his own account. Upon the receipt of this letter, your complainant sent its representative again to see him and again tendered to him the sum of Seventy-two Dollars (\$72.00)

and started to cut and remove the timber on his land purchased from him as aforesaid; but upon the threat and offer of the said Howell to use force to prevent the same, your complainant desisted.

Your complainant is advised that said contract stipulates no time within the said two years at which the said interest shall be paid, and that your complainant has a right, under the circumstances above stated, to pay said interest now to said Howell, and become entitled to said additional period of two years within which to cut and remove said timber.

Your complainant has been at all times ready, willing, eager and anxious to comply with all the terms, conditions and provisions of said contract made by said Howell as aforesaid, and is now ready and willing to comply with said terms and conditions, and here and now tenders to said Howell, and offers to pay into this Court, ^{for his account} the sum of Seventy-two Dollars (\$72.00), lawful interest on the consideration named in said deed for two years, and which is the amount to which, under said contract, said Howell is entitled to receive for said extension.

Your complainant is advised that upon the payment of said amount, being the lawful interest provided for in said contract, he has a right to cut and remove said timber as aforesaid within two years from the 6th day of February, 1906, and that the said Howell has no right to prevent him from so doing.

IN TENDER CONSIDERATION WHEREOF, and for as much as your complainant is remediless save in a Court of Equity, where matters of this kind are alone and properly cognizable, your complainant prays that the said A. J. Howell may be made a party defendant to this bill and required to answer the same, but an answer under oath is waived: that the said A. J. Howell may be required to accept the sum of Seventy-two

Dollars (\$72.00), tendered to him by your complainant in payment of lawful interest as provided by his said contract; and that the said A. J. Howell, his attorneys, agents and employees may be enjoined and restrained from interfering with your complainant, its agents or employees, in cutting and removing from said land the standing timber purchased by your complainant under said contract as aforesaid, provided the same is cut and removed within two years from the 6th day of February, 1906; that proper process issue and that all such other, further and general relief may be afforded your complainant as the nature of ~~its~~ case may require or to equity shall seem meet.

And your complainant will ever pay, etc.

E. E. Halland *Alfred B. Cramer Co. Inc.*
By A. B. Cramer, Pres.

STATE OF VIRGINIA, (TO-WIT:
 NANSEMOND COUNTY, (

Alfred B. Cramer, President of the Alfred B. Cramer ~~Inc.~~ Company, Incorporated, the complainant named in the foregoing bill, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be on information, he believes them to be true.

Alfred B. Cramer
 Taken, sworn to and subscribed before me, *E. E. Halland*,
Halland a Notary Public, in and for the County and State
 aforesaid, in my County aforesaid, this *24th* day of July, 1906.

E. E. Halland
N.P.

Commission expires June 30th, 1910

IN THE CIRCUIT COURT OF HANSEMOND COUNTY, *in*
vacation, on the 6th day of July 1906.
ALFRED B. CRAMER ~~LUMBER~~ COMPANY, INCORPORATED, (

vs. (

A. J. HOWELL. (

On motion of the plaintiff, by counsel, and for good cause shown, an injunction is awarded it to enjoin and restrain the defendant, A. J. Howell, his attorneys, agents and employees, from interfering with the plaintiff, in any way, in cutting and removing the standing timber purchased from him by A. A. Holland by deed dated the 6th day of February, 1903, provided the same is cut and removed within two (2) years from the 6th day of February, 1906.

But the plaintiff is not to have the benefit of this order until it shall enter into bond, with sufficient security, in the penalty of *One thousand (\$1000)* Dollars payable to the defendant and conditioned to pay all such costs as may be awarded against it and all such damages as may be incurred in case this injunction shall be dissolved.

*All of which is hereby certified to
the Clerk of said Court to be
entered in the chancery
order book.*

Robert R. Mead

Entered July 6, 1906
Robert R. Hunt

Entered in Chancery
Order Books No. 4,
page 71.

A Brammer Co
W. Chaucery
A J Howell

Bill

A B Cramer Company

vs Chancery

A J Howell

1906 July 7th. Process issued returnable
to July Rules 3rd Monday.

" " 16th Process returned executed
on defendant.

Bill filed and decree nisi
against him.

" Aug 2nd Process issued against A & A
Holland returnable to August
Rules first Monday.

" " 6th Process returned executed on
defendant A & A Holland.

Cross Bill filed and decree
nisi against him.

" " 20th Decree nisi confirmed and
cause set for hearing as to
all the defendants.

Chancery Notes.

Mr. Withers

STENOGRAPHER'S MINUTES.

CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

A. J. HOWELL,

Before

vs.

D. S. Phlegar, Notary Public.

ALFRED B. CRAMER COMPANY.

In Chancery.

Suffolk, Va., Sept. 20th, 1906

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MONTROSS, CLARKE & EMMONS, 61 NASSAU ST., N. Y.

D. S. PHLEGAR,
SHORTHAND REPORTER,
NORFOLK, VA.

1 IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

2
3
4 A.J. HOWELL, *

5 vs. *

6 In Chancery.

7 ALFRED B. CRAMER COMPANY, *

8
9 Depositions of witnesses taken before me, D.S. Phlegar,
10 a Notary Public for the City of Norfolk, in the State of
11 Virginia, acting by consent of parties in the County of
12 Nansemond, Virginia, pursuant to notice, at the office of
13 R.W. Withers, Suffolk, Virginia, September 20, 1906, to be
14 read as evidence on behalf of the complainant in the above
15 mentioned suit pending in the Circuit Court of Nansemond
16 County, Virginia.

17
18 PRESENT:

19 R.W. Withers for the complainant.

20 J.U. Burgess and E.E. Holland for the defendant.

21
22 -----ooOoo-----

23
24 D.S. Phlegar,
25 Shorthand Reporter,
26 Norfolk, Virginia.

D. S. PHLEGAR
SHORTHAND REPORTER
NORFOLK, VA.

D. S. PHLEGAR
SHORTHAND REPORTER
NORFOLK, VA.

2

1 A. J. HOWELL, (Colored), being duly sworn, testified as
2 follows:

3 BY COL. HOLLAND: We make the motion that all
4 witnesses except the one testifying be excluded.

5 NOTE: To which counsel for the complainant objects,
6 and the witnesses remain in the room.

7 BY MR. BURGESS: Counsel for the defendant states
8 that it is especially necessary and desirable in this
9 case that the witnesses be excluded as they will all
10 testify to similar transactions, and it is contemplated
11 that the decision of the issue must depend to a great
12 extent upon the truth and accuracy of the testimony
13 of the witnesses.

14 By Mr. Withers:

15 Q. Please state your name, age, residence and occupation,
16 and if you know the parties to this suit?

17 A. A. J. Howell; age fifty; Holland; farmer; I am one of the
18 parties to this suit.

19 Q. On the 6th of February, 1903, were you the owner of a
20 certain tract of land known as a part of the old Lee tract in
21 this county? A. Yes, sir.

22 Q. Please state if, before this time, you had any conversation
23 with Mr. A. A. Holland with reference to the sale of the standing
24 pine timber on this land, and, if so, what was the result of
25 your talk?

26 COL. HOLLAND: The question is excepted to on the
ground that the record shows that there was a deed

DEPT. OF JUSTICE
RECORDS SECTION
WASHINGTON, D. C.

D. S. PHLEGAR
SHORTHAND REPORTER
NORFOLK, VA.

A.J. Howell

3

1 made between these parties covering the timber re-
2 ferred to, and is supposed to contain the entire
3 agreement between them.

4 A. I sold to Mr. A.A. Holland the standing pine timber on my
5 land, and he told me that he wanted it down to twelve inches.
6 I told him all right; I agreed to sell him down to twelve
7 inches, and then he stated he had on the contract the printed
8 form calling for down to ten inches, but that he was going to
9 place a saw mill over in the woods, and that he was going to
10 cut the timber himself, and he would not cut it down any lower
11 than twelve inches, as he promised me to do. I told him all
12 right, and then he goes on down the contract and explains it
13 as to the railroad that was coming through, and he says "Jackson,
14 I am going to cut the lumber myself, and you will never be
15 bothered with the railroad coming through". I told him all
16 right, and everything goes along --

17 By Mr. Withers:

18 Q. One moment. You are now telling about when he came with
19 the written contract? A. Yes, sir.

20 Q. My question desires an answer as to the time that he
21 came, and you first began to talk about selling it?

22 A. He came there and wanted to buy the lumber, and we did
23 agree to buy and sell the timber, and I asked him down to
24 twelve inches, and I asked when did he agree to cut it,
25 and he said three years, and we did bargain and sell. Then
26

1 when he came with the contract, as I before stated, he come
2 with the contract and stated the inches, the stumpage fifteen
3 inches from the ground, and twelve inches across the stump,
4 as I bargained to. He said "I am going to cut it myself, and
5 I will not cut it any lower than I bargained to cut it", and
6 I said "all right". He moved all along, and when he got to the
7 railroad he said "this railroad is only a matter of form on
8 the contract, and you all will never be troubled with the
9 railroad, I am going to cut the lumber myself, and you will
10 not be bothered with the railroad". When he got down to
11 the time that he would have to cut it in - when he come up
12 that morning I said "how long do you want to cut it," and Mr.
13 Elihu Joyner was with him, and I thought I would call his
14 attention to it again, and I said "how long do you want to
15 cut this timber in", and he said "three years is all I want,
16 I can cut it in three years", and I said "all right", and so
17 he filled in the three years, and I signed the contract.

Q. Did you see him fill in the three years in the contract?

A. I was sitting some distance behind Mr. Elihu. He was
there writing, and I never saw the words.

Q. But that is what you understood he was filling in?

A. Yes, sir.

Q. Who did the writing? A. Mr. Elihu.

Q. Mr. Elihu who? A. Joyner.

Q. Was Mr. Gus Holland present? A. Yes, sir.

Q. Who else was present? A. No one but we three. My

1 wife was in the cook room.

2 Q. Did you then take the contract to read it?

3 A. Mr. Joyner handed me the contract to read, and I attempted
4 to try to read it in my slow way. Mr. Elihu said "let me
5 assist you in reading it", and he read the sturpage and railway
6 and the time, and he said "the remainder is nothing but the
7 form". He said the railway was mere form and the ten inches
8 we stopped and explained, and he stated "the remainder is
9 nothing but form, as all contracts are formed out", and then I
10 signed the contract.

11 Q. At what point in the contract did he stop reading?

12 A. He stopped at the sturpage, the ten inches and twelve
13 inches. He said I bought it at ten inches but I shall not
14 cut it any lower than twelve inches.

15 BY COL. HOLLAND: It is understood that all questions
16 and answers which tend to vary, modify or contradict
17 in any way the written contract between A.J.Howell
18 and A.A.Holland is excepted to especially so far
19 as it applies to A.B.Cramer Company. And it is
20 agreed that this exception need not be repeated to
21 each question and answer as the same shall be asked.

22 By Mr. Withers:

23 Q. I understand you to say that after the contract had been
24 filled out that you began to read in your slow way, and Mr.
25 Joyner offered to take the contract and to assist you?

26 A. Yes, sir.

Copy

Read

1 Q. You thanked him, and he read the contract down to the
2 point in which the size of the timber is mentioned?

3 A. Yes, sir.

4 Q. And there he stopped? A. Mr. Gussie stopped
5 him and explained it.

6 Q. Mr. Gus Holland stopped him to explain that while the con-
7 tract read ten inches that he would not cut lower than twelve
8 inches, as he bargained? A. Yes, sir.

9 Q. Then, what happened next? A. He moved on
10 down to the railroad, or whatever come first - I don't remember
11 whether the railroad come first or the stumpage come first - and
12 he explained the railroad just as the inches across the stump,
13 and he said "it is here as a form, but I will cut it myself,
14 and you will not be bothered with a railroad".

15 Q. Then he read to what other point?

16 A. He read down until he got to the time - three years.

17 Q. I now read you the contract as it was recorded, so far
18 as this clause is concerned: "And said parties of the first
19 part hereby grant, accord and assure unto said party of the
20 second part, and his assigns, the full term of three years
21 within which to cut and remove the timber hereby conveyed,
22 said term to commence from date of contract, and two years
23 more by paying lawful interest". I will read this clause again,
24 and I desire that you stop me at the point Mr. Joyner stopped:
25 "And said parties of the first part hereby grant, accord and
26 assure unto said party of the second part, and his assigns, the

1 full term of three years within which to cut and remove the
2 timber hereby conveyed, said term to commence from date of
3 contract, and two years more by paying lawful interest"?

4 A. I never heard anything about any two years until I went
5 to the record and found it on there.

6 Q. Then Mr. Joyner stopped reading at the point in the con-
7 tract before the words "and two more years by paying lawful
8 interest"?

9 A. Mr. Gussie stopped him at the point of the stumpage, of
10 the ten inches or twelve inches.

11 Q. I mean when he was talking about the time?

12 A. Three years was all that was said anything about.

13 Q. After he read that he was to have three years in which
14 to cut the timber, what was he then to do?

15 A. After he had the three years in which to cut the timber,
16 he read the stumpage and the railway, and then said the remainder
17 of the contract was not anything more than a form as all the
18 contracts were struck out under, and what I sold for was the
19 stumpage and time and the railway, and this was in consideration
20 that he was going to put the mill there, and we would not be
21 bothered with any railroad there.

22 Q. The question about the railroad and the stumpage had all
23 been passed over? A. Yes, sir.

24 Q. And he came to the question of how long he was to cut
25 it? A. Three years.

26 Q. Then he read down to the point where he was granted three

D. S. PHLEGAR
SHORTHAND REPORTER
NORFOLK, VA.

D. S. PHLEGAR
SHORTHAND REPORTER
NORFOLK, VA.

A.J. Howell

8

1 years?

A. Yes, sir.

2 Q. Then he said what?

3 A. That the balance of the
4 contract was not anything more than a form, as all contracts
5 were drawn up, but the balance was ours as to stumpage and
6 r ilway and so on.

7 Q. Then I understand you to say that you had no knowledge
8 when you signed the contract that you granted more than three
9 years in which to cut it?

10 A. No, sir, it was not
11 mentioned. I asked him that morning when he and Mr. Elihu
12 come up, and I said "Mr. Holland, how long do you want to
13 cut this timber", and he said "three years is all I want; I
14 can get it off in three years".

15 Q. And no other time had been mentioned?

16 A. No, sir, no other time had been spoken of.

17 Q. When did you find out that the contract, as recorded, read
18 for two more years?

19 A. Last fall. It was agitated
20 among some of our white friends that they had five years to
21 cut this timber in, and I said "no, no, it can't be so", and
22 I didn't pay any attention to it, and the agitation kept on
23 until some of the parties come down here and got Mr. Gomer
24 to read the contract, and Mr. Gomer told them that they had
25 three years and two additional years. They come back and
26 told me about it, and I said right up and down "it is a lie,
it ain't so, because I know that there can't be any such as
that on the record under no circumstances however." Then they
replied to me "you go and see if it ain't there". I come down

1 here and got Mr. Gomer to search for me and read it to me.
2 Mr. Gomer replied to me that that was every day work, that he
3 didn't know how many there had been there to look after these
4 contracts, and he read the contract to me just as you read it
5 there, with the two years additional. That was the first of my
6 knowing positively it was there. I heard of it, but I did not
7 know positively it was there.

8 Q. When did you first hear of it? A. Last fall.

9 Q. When did you go to see for yourself?

10 A. Sometime along before Christmas.

11 Q. Are you an educated man? A. No, sir. I can
12 write my name and read along a little slowly by taking my
13 time and spelling, and so on.

14 Q. Is your timber a part of a line of timber bought about
15 the same time by Mr. Holland? A. The same as what?

16 Q. The same time as yours was bought? I mean did he buy
17 from your neighbors at the same time he bought yours?

18 A. Yes, sir, he bought through there at the same time. I
19 don't know whether he bought the same day, but he was riding
20 through buying up the whole neighborhood. He told me that
21 morning that he was in a hurry, and wanted to sign up all the
22 contracts, or as many as possible, and he wanted to get around.
23 I know that he was buying all through the neighborhood.

24 Q. Did Mr. Gus Holland ever say anything to you about having
25 two additional years in which to cut the timber?

26 A. No, sir, there was never a word spoken about two additional

1 years.

2 Q. Was he present at your home when the contract was signed
3 by you? A. He was present. He and Mr.

4 Elihu came together. Both came together, and both left to-
5 gether. I signed the contract in his presence, and also in
6 Mr. Elihu's presence.

7 Q. When did your wife sign? A. I called her out
8 of the cook room, and she come in there and signed it. She
9 sort of held back a little, and I think she remarked at the
10 same time, before we signed the contract, that we gave a deed
11 of trust on the home place a good many years before, by his
12 father, old man W.T. Holland wrote the contract, and my wife
13 replied at the same time that his wife, Miss Sally, told her
14 it was a bad thing to give mortgages, and we went eighteen
15 or nineteen years before we lifted the mortgage, and she de-
16 clared she would never give a mortgage, and I replied that it
17 was nothing to give us any hurt, only I had sold the timber
18 to Mr. Holland, and he was to have three years to cut it, and
19 then she willingly signed it. Those are the facts and truths.

20
21 CROSS EXAMINATION

22 By Mr. Burgess:

23 Q. You say on the 6th day of February, 1903, you owned the
24 land on which this timber was situated that you sold to Mr,
25 Holland. How long had you owned that land?

26 A. That I sold to Mr. Holland?

Q. All of it?

A. Mr. Holland comes to me before I sold to him, and says to me "I want to buy your standing lumber", and I told him all right, and so we bargained. I told him I did not care about selling what lumber I had on my home place, because I just had that to take care of my home place, and he says, "I am going to buy this tract of land over here known as the Luke and Gratt Jones", and he said "if I buy that place I will sell you that 100 acres there, and you can sell me the whole entire lumber, and then I will just cut this timber down to ten inches, and it will leave you enough on both places to secure the home place and both places," and I sold, and he went to work and secured the 100 acres, and then sold it to me, and then I sold him the timber. //

Q. For what price did he sell you the 100 acres of land?

A. \$138 he bargained for. He wanted \$150, and we continued on until we got to \$138.

Q. That is he was to take the timber, and you were to take the land and pay him \$138?

A. He was to sell me the land, and then I sold him the timber.

Q. What was the purchase price of all timber that he bought from you?

A. \$600.

Q. What tracts of land?

A. It included all; the home tract, and the second tract and the third tract I bought from him, too.

Q. Then, if I understand, you said you did not care to sell the timber on your home place because you wanted to keep up the

1 farm?

A. Yes, sir.

2 Q. He told you that he was going to buy the Jones and Luke
3 tract, which he would sell to you, and you could sell all the
4 timber down to ten inches?

5 A. Twelve inches, and that would leave enough timber on the
6 entire land to keep up the place.

7 Q. Are you sure he said ten or twelve?

8 A. Twelve; he bargained for twelve.

9 Q. You stated ten in your opening statement?

10 A. I said all the sale we bargained for twelve inches, and
11 in reading the contract he stopped and explained the ten inches
12 stumpage.

13 Q. Wait, and we will get to that. What valuation did you
14 put on the land which you bought from him?

15 A. I just explained that, that he wanted \$100, but I did
16 agree to pay him \$138 or \$138.50, I don't remember which.

17 Q. Was that \$138 which you agreed to pay him deducted from
18 the amount that he was to pay you for the timber?

19 A. Deducted from the amount?

20 Q. How much did you charge him for the timber on the other
21 two tracts? On the tracts you owned before you bought the
22 Jones and Luke tract? A. I think it was \$60.

23 Q. Then you think you had offered to sell him the timber
24 that you owned on both places - was it for \$60 before you
25 bought this other land? A. That is if I bought

26 this piece from Luke and Gratt. If he could buy and sell it to

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13

1 me I would sell him the entire thing.

2 Q. And that you estimated the timber on the other two tracts
3 to be worth \$60? A. Yes, sir, \$62.50 or \$60.

4 I don't remember which. I think it was \$62.50.

5 Q. Then if Mr. Holland had not bought the Jones-Luke tract
6 you would have sold --

7 A. I would not have sold him any. I told him that. He
8 said "why I am so particular about getting yours, yours runs
9 down to the Lee Road, and I want to cross". He says "if I get
10 this on this side of the road, I can have free access to cross".

11 Q. Did he make you a deed to the Jones land on the same day
12 you made a deed for this timber? A. I think that Mr.
13 Elihu made the deed right then and there. I think Mr. Elihu
14 called his attention as to how to arrange it, and how to deed
15 it.

16 Q. Then, when you and Mr. Holland were talking about the
17 length of time and the railroad, Mr. Holland owned the land,
18 and no deed had been made to you; am I correct?

19 A. Mr. Holland explained the railroad and the sturpage at the
20 time this contract was made.

21 Q. But you talked over the matter, and reached an agreement
22 before any deeds were written?

23 A. We talked over the matter that if he could buy this of
24 Gratt and Luke I would sell.

25 Q. On the day Mr. Holland and Mr. Joyner came to your house;
26 Mr. Holland then had a deed for the land from Mr. Jones and Mr.

1 Luke, didn't he? A. I suppose so. He must have
2 had it, because he gave me the deed.

3 Q. And all that you had was the timber on your two home
4 places which he wanted? A. That is correct, at the
5 time before we bargained.

6 Q. When you got together that morning Mr. Holland owned the
7 Jones-Luke land, and you owned the timber on your two home
8 places which you valued at \$62?

9 A. \$60 or \$62.

10 Q. Then Mr. Holland said "I will make you a deed to the land,
11 and you rake me a deed back to the timber"?

12 A. Correct.

13 Q. "And include in that deed the timber on your land"?

14 A. Yes, sir.

15 Q. And it was expressly stated it was down to twelve inches?

16 A. Yes, sir.

17 Q. Then, what did Mr. Joyner do? Did he sit down and draw
18 a paper? After you all reached an agreement, what did Mr.
19 Joyner do? A. He wrote the contract.

20 Q. Which contract - contract which Mr. Holland signed, or the
21 contract you signed? A. He wrote the contract I

22 signed, and also he fixed up the other papers, but I am not
23 sure as to that part. I think that is what Mr. Gussie told
24 him. He told him to make me a deed to the land, and then I
25 would sell him the whole entire lumber.

26 Q. Did you read the deed which Mr. Joyner drew from you to

1 Mr. Holland? A. I started to read it, and was
2 making very slow hand at reading it.
3 Q. Which deed were you reading that you referred to as fine
4 print? The contract from Mr. Holland to you, or the timber
5 contract? A. The timber contract.
6 Q. Did you read the deed from Mr. Holland to you?
7 A. No, sir.
8 Q. Did he give you that deed? A. Yes, sir.
9 Q. Did you take it that day? A. I don't remember
10 whether I took it that day, or when I took it.
11 Q. When did you get that deed?
12 A. I don't know, sir, when I got it. I think I come to the
13 record here last year some time and got that deed out.
14 Q. You do not understand me. When did you get the deed
15 from Mr. Holland? A. I got it that day. He gave
16 it that day.
17 Q. Who took it to the Clerk's Office to have it recorded?
18 A. I don't know to be certain about it.
19 Q. Did you send it to the Clerk's office.
20
21 BY MR. WITHERS: The foregoing line of questions
22 is objected to because irrelevant, there being no
23 contention in the pleadings, or otherwise, that A. J.
24 Howell had no right to sell the timber in the con-
25 tract mentioned. If he did not have the actual
26 deed to the land spoken of as the Luke-Jones land,
he had an equitable title, which was sufficient be-

*What deed was recorded in the
Hawley deed of 1888*

tween the parties.

By Mr. Burgess:

Q. Are you positive that you got the deed from Mr. Holland on that day? A. I just explained to you that Mr.

Elihu asked him how he would arrange --

Q. You can get it all out by saying "yes" or "no".

A. I explained it, how it was, and Mr. Gussie told him to make me a deed for the Luke and Jones land, and then I sold him the whole entire lumber.

Q. You have gone over all that. When did you get the deed?

A. I told you I think I got the deed out of the Clerk's Office.

Q. I did not ask you that. I asked you when it was handed you by Mr. Holland?

A. I don't remember.

Q. You don't know? A. No, sir, I don't at this juncture. I don't remember whether he admitted it to record.

Q. Do you remember whether it was written that day?

A. I don't know. I know he told Mr. Elihu to do it.

Q. Do you know whether there was a deed of trust written that day? A. A deed of trust on who?

Q. Either given by you to secure Mr. Holland, or by Mr. Holland to secure you?

A. I gave Mr. Holland a deed of trust for the securement -- let me see: yes, I think I gave him a deed of trust for the securement of this land.

1 Q. What did you give him a deed of trust on?

2 A. I gave him a deed of trust on the 100 acres of land.

3 Q. Did your wife sign that deed of trust?

4 A. I think she did.

5 Q. You repeated a conversation just now with your wife in
6 which she said she would not sign a deed of trust?

7 A. Yes, sir.

8 Q. She said she would not sign it? A. No, she said
9 at the time his father was living and wrote us a deed that his
10 mother remarked that it was bad policy.

11 Q. Did she sign the deed of trust on that day?

12 A. She signed what was signed on that day.

13 Q. As a matter of fact, has your wife ever signed that deed
14 of trust? A. I don't know.

15 Q. As a matter of fact, have you ever signed the deed of trust?

16 A. I don't remember.

17 Q. Has Mr. A. A. Holland's wife ever signed the deed to you?

18 A. I think the deed says so.

19 Q. Do you remember that day whether or not the deed which
20 Mr. Holland had was signed by his wife?

21 A. I don't know.

22 Q. Do you remember whether he had a deed in his hand that
23 day, or not? A. I don't know, sir. I know
24 that he told Mr. Joyner to write it.

25 Q. How long were Mr. Holland and Mr. Joyner at your house?

26 A. They were not there no great while, because they were very

1 much in a hurry, and they got through their business as early
2 as they possibly could.
3 Q. You can't recall how many papers were fixed up?
4 A. Not properly, I don't think.
5 Q. Let me ask you this question: How is it when you don't
6 know whether you ever got a deed from Mr. Holland that day,
7 you don't know whether the deed was drawn that day, whether the
8 deed you have was signed by Mr. Holland or his wife, you
9 don't know whether you gave a deed of trust, you don't know
10 whether if you gave a deed of trust whether you signed it,
11 or your wife signed it, or what was in the deed of trust, -
12 how is it you can now repeat so clearly and accurately the
13 transaction which took place in the signing of the timber deed,
14 and have forgotten everything else?
15 A. Because I sold him the timber.
16 Q. Now, if I understand you, Mr. Joyner read the whole deed
17 down to three years? A. Yes, sir.
18 Q. Are you positive, and are you prepared to swear that when
19 Mr. Joyner got to that point he never read another line?
20 A. I don't say that he never read another line. He read the
21 stumpage and the railway and the time, the three years, and
22 then he stated that the balance down there was nothing more
23 than a form.
24 Q. Did he say anything after reading the words three years
25 which would lead you to believe that there was an extension
26 clause? A. No, sir. After he read to the

1 point three years he said the remainder is simply a form as to
2 how contracts are drawn up.

3 Q. Have you made a deed of trust which your wife signed --

4 A. She signed all the papers that were signed that day.

5 Q. If you don't remember what was in that deed, how can you
6 be so accurate and stop off at a certain point in this deed
7 and say exactly how he read it to a certain point, and say
8 he never read any more? A. I say that he read

9 the stumpage and the railway and the time, the three years, and
10 then stated that the remainder of the contract was simply
11 form.

12 Q. You can write, can't you Howell? A. A little.

13 Q. Did you ever have to do any writing? A. Sometimes.

14 Q. Did you ever occupy a position which required you to
15 write? A. Oh, yes, sir. I occupied several

16 positions that caused me to do the best I could.

17 Q. Name the positions you have occupied which necessitated
18 your writing? A. I was secretary of the church

19 at one time.

20 Q. Secretary of the church? A. Yes, sir.

21 Q. And as such secretary it was your duty to do what?

22 A. To record the matters that pertained to the church, as
23 best I could.

24 Q. Did you look after the correspondence for the church too?

25 A. I did it in the best manner I could until we got some one
26 better able to do it than I could.

1 Q. Well, what other positions have you held?

2 A. I was constable of this county for one session.

3 Q. What do you mean by "one session"? A. One term.

4 Q. Your duties as constable made it necessary for you to
5 make returns? A. Yes, sir.

6 Q. And write warrants? A. Yes, sir.

7 Q. You had no trouble in doing that?

8 A. Sometimes I would get Mr. Jones, my magistrate, to do
9 it.

10 Q. When a warraht was sent to you to serve, you would do it?

11 A. Yes, sir, he would take much pleasure in assisting me
12 how to read it, and explain things I could not understand.

13 Q. Look at this paper which I hand you, and which is herewith
14 filed marked exhibit A, it being the original deed from A. J.
15 Howell and wife to A. A. Holland, and tell me if that paper
16 has been altered since you signed it?

17 A. I did not read it then, and I can't read it now, because
18 I can't see. I can't see one line from another.

19 Q. Have you your galsses? A. I have not got them
20 with me, and I have to use them. I can't see there one letter
21 at all. I can see the W but I can't see the next letter to
22 tell what it is. I use my glasses in doing any reading I
23 have to do.

24 Q. How long have your eyes been so seriously affected?

25 A. My eyes have been affecting me five or six years, but
26 I never put glasses on until the last two or three years to

1 use them regularly.

2 Q. Did you have them the day the contract was signed?

3 A. No, sir. I had them, but I did not have them on.

4 Q. Is that your signature? A. Yes, sir, that is my
5 hand.

6 Q. Has your eye sight gotten any worse since the day you
7 signed this deed? A. Yes, sir, it is much
8 worse.

9 Q. Then on that day you could read most of the deed, couldn't
10 you? A. I did not read the deed. Mr. Elihu
11 handed me the contract to read, and I started in my best form
12 that I could, and he assisted me, and I did not attempt to try
13 to read.

14 Q. Who read the deed from Mr. Holland to you, if there was
15 one? A. Mr. Elihu, or he must have read it
16 if it was read.

17 Q. And if there was one? A. Yes, sir.

18 Q. Who read the deed of trust, if there was one, that you
19 gave them? A. They must have read it.

20 Q. Did you attempt to read it? A. Not that I know
21 of; I am not sure.

22 Q. You knew that if he put down ten inches in this contract
23 that it would bind you, if you signed it?

24 A. I did not have any idea that he would put it there.

25 Q. Did not you testify that he said that the form read ten
26 inches, but he would cut it, and he would not cut but twelve?

1 A. Yes, sir.

2 Q. Then you knew it was there? A. I knew it was there
3 because he stopped Mr. Elihu and explained it.

4 Q. Then you knew if you signed it with the ten inches it
5 would bind you? A. No, sir, because he said he

6 would not cut lower than twelve inches.

7 Q. You have been constable and secretary of the church, and
8 you think you can sign a contract which said ten inches, and
9 does not give a man a right to cut it lower than twelve inches?

10 A. He told me that he would not cut lower than twelve inches,
11 and I was just as confident that he would not cut lower than
12 twelve inches as I am that I am sitting in this chair. I
13 was just as confident of it as I am that I am sitting in this
14 chair.

15 Q. If Mr. Holland has said "I want two years more extension
16 on that three years" --

17 A. He didn't say that.

18 Q. That is not the question. I say if he had said it, and
19 if he had said "I will pay you 6% on the purchase price",
20 would you have signed a contract to that effect?

21 A. That depends on circumstances. We were not bargaining
22 for five years, and were not selling for five years, but were
23 selling for three years.

24 Q. Had there been any mention of any extension at all?

25 A. No more than three years.

26 Q. There had never been anything said about two more years?

1 A. No, sir.

2 Q. Now, Howell, can you explain to me why, if Mr. Holland
3 owned the land and the timber, and was going to sell you the
4 land, and let you sell him back the timber, and if he wanted
5 that extension, and you say you do not know what you would
6 have done about it, why he should not have told you outright
7 that he wanted five years, or three years with an extension of
8 two?

9 BY MR. WITHERS: Objected to as purely conjectural,
10 and upon matters which this witness cannot know,
11 as he is not supposed to be a mind reader.

12 A. I don't know what would have taken place if I had known
13 he wanted five years.

14 By Mr. Burgess:

15 Q. Do you charge that Mr. Holland wilfully misled you in
16 this transaction?

17 A. I charge that I knew nothing about the five years.

18 Q. Do you charge that Mr. Elihu purposely stopped reading
19 there to mislead you?

20 A. I charge that he read
21 what I explained, and he explained that the remainder was
22 more a form as all contracts were. This was our bargain, and
23 our sale, that we had gone over.

24 Q. Made that day? A. We went over it that day

25 Q. The bargain was made that day? A. We went over
26 it before and bargained along the lines I just explained to
you.

1 Q. Did you pay any more attention to the timber contract
2 which you gave to him than you did to the deed which he was
3 going to give you for the land?

4 A. I went to the record and found the deed there, and why
5 I come then there were some back taxes on it, and somebody
6 sent me some papers stating that I had to come and pay the back
7 taxes, and I come and paid the back taxes.

8 Q. You don't know how that deed ever got there, do you?

9 A. I don't remember whether he carried it, or whether I sent
10 it.

11 Q. You did not know, as a matter of fact, whether Mr. Holland
12 ever gave you a deed until you found it on the record?

13 A. Yes, sir, I know that he told Mr. Elihu to give it with
14 that direction.

15 Q. You were willing to trust Mr. Holland, and let him give
16 you a deed for all that land, and did not know where the deed
17 went, and did not know it was on record until you got there,
18 and yet you were so particular in watching the reading of
19 every clause that you can put your finger now on every word
20 where Mr. Jpyner stopped; do you think that is reasonable?

21 A. You ask me what?

22 Q. (The question is read)?

23 A. I was not so particular as to either one of the deeds.
24 I had any amount of confidence in the gentlemen that the world
25 could not have beat my opinion of them. I had all the con-
26 fidence of the world in them, because I was raised with him,

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1 and know him from a boy up. I had just any confidence in the
2 man along those lines.
3 Q. You had not had your attention called one way or the other
4 to any extension, had you, at that time?
5 A. No, sir, there was no extension of the three years.
6 Q. When was the first time, after you signed this deed, that
7 you heard any talk about this matter, whether Mr. Holland
8 had sold it to anybody else, or whether anybody else was there
9 looking over it? A. I don't really know to be
10 sure about it. Mr. Zackery, old man Z.T. - told me some time
11 after that he was in the store, and said he had made sale of the
12 land that he bought.
13 Q. How long was that after the sale?
14 A. I don't know.
15 Q. Has anybody been up there, to your knowledge, to look
16 over the timber since you sold it?
17 A. What do you mean?
18 Q. Since you sold it?
19 A. Yes, I had a man there.
20 Q. Who was that man? A. Mr. Paul Jones.
21 Q. Did I understand you to say you had him go there?
22 A. Yes, sir.
23 Q. Do you know anybody else who has gone through there?
24 A. I know of mine and Mr. Rawles.
25 Q. Do you know of anybody else who has been through there
26 estimating and looking at the timber? A. I know of

1 mine and Mr. Rawles, because I was there when he went through.

2 Q. Do you know of anybody else?

3 A. I don't know of anyone else, but I have heard.

4 Q. Who have you heard?

5 A. Most of them.

6 Q. Name those you have heard? A. I don't know that
7 that would enter into this matter, because I am only here to
8 testify as to my own, and the part I had anything to do with.

9 Q. You do not care to talk about that at all?

10 A. I don't know that it is any of my business.

11 Q. You would rather not talk about it?

12 A. So it don't make any difference to me.

13 Q. Go ahead and tell us the folks you have seen?

14 A. I told you the ones I have seen. The others I heard
15 that they had others go over it and estimate it, but I don't
16 know. I was summoned here to tell what I know about it, and
17 that I don't know.

18 Q. Do you know whether Mr. Jim Crocker has been over that
19 timber, or not? A. I don't know anything about
20 Mr. Jim Crocker.

21 Q. Do you know whether Mr. Mills Gay?

22 A. I don't know Mr. Mills Gay from a bunch of turnip tops
23 no more than a man. Mr. Mills Gay?

24 Q. Yes?

25 A. Do you mean this Mr. Gay Mr. Cramer has?

26 Q. Yes.

1 A. Yes, sir, I have seen him, but I don't know his name.

2 We all know him as Mr. Gay. He has been up there all over it.

3 I don't know about all over it, but he has been there cutting.

4 I don't know his name.

5 Q. When was the first time that you heard he was there?

6 A. He came there with lawyer Holland. Col. Holland intro-
7 duced him to me as Mr. Gay, and I have been knowing him as
8 Mr. Gay ever since.

9 Q. When was that? A. Some time along in May
10 of this year.

11 Q. Col. Holland and Mills Gay came to see you?

12 A. Yes, sir.

13 Q. Did he ask you anything about this contract?

14 A. Yes, sir.

15 Q. Who did the talking? A. Mr. Holland.

16 Q. What did Mr. Holland say to you about this contract?

17 A. I could not say I exactly committed to memory all that
18 was said, but he come and said that the Cramer Company had
19 possession of the lumber that I sold to Mr. A.A.Holland, and
20 that they had an extension of two years, and so forth, and
21 so on.

22 Q. What else did he say? A. I could not say to
23 save my life. We talked right much, and I think he wanted
24 three years more, or two years more, making four or five years
25 in all, and we did not do any business that day, and he asked
26 me to let him hear from us shortly, and we agreed to it.

1 Q. What position did you take?

2 BY MR. WITHERS: The question is excepted to.

3 A. I told him we would let him hear from us.

4 By Mr. Burgess:

5 Q. Did you say anything to Mr. Holland about not knowing that
6 the extension was in there? A. I told Mr. Holland
7 that we sold for three years, and he said "we have you on the
8 record for five years", and I told him I understood it, that I
9 had been to Mr. Gomer.

10 Q. You were not surprised? A. I had seen it on the
11 record, and Mr. Gomer had read it to me.

12 Q. And you told him you would let him hear from you as to
13 whether you would take up his proposition and extend the
14 time? A. Yes, sir.

15 Q. You are positive you said to Mr. Holland, in the presence
16 of Mills Gay, "I did not know that the two years was in here
17 until Capt. Gomer read it?"

18 A. I told Mr. Holland that there was a misunderstanding,
19 and we were not satisfied, but we sold for three years, and
20 he remarked that they had it on the record, or we had signed
21 the papers in the record for five years, and I told him we
22 were not satisfied with the matter, and so they left with
23 the understanding that he was to hear from us shortly.

24 Q. That is that you would let him know whether you would
25 accept his proposition to grant a further extension, or
26 whether you would not? A. Yes, sir.

1 Q. Did you explain to Mr. Holland how you come to make this
2 deed? A. Not much, but some.

3 Q. How did you explain to him?

4 A. I did not explain very much because I told him we were
5 dissatisfied about it, and we would not do anything that day.

6 Q. Was that all the explanation you gave him of how it took
7 place? A. It might not have been. There
8 might have been some more words spoken that I am not prepared
9 to commit to memory.

10 Q. You did not tell him about reading to three years, and
11 not reading any more? A. I don't know that I did.
12 I told him we sold for three years.

13 Q. You did not tell him it was put in there after you signed
14 the paper? A. I don't know that I did. I
15 might and I might not.

16 Q. But you did tell him that there was some dissatisfaction
17 or some misunderstanding? A. Yes, sir, some dis-
18 satisfaction.

19 Q. When was it that you heard anything about this clause
20 being stuck in this deed? A. Do you want me to
21 tell it half a dozen times?

22 Q. Yes, as many times as I ask you.

23 A. Last fall.

24 Q. What month last fall? A. Sometime about
25 Christmas.

26 Q. What time did you go to see Captain Gomer?

1 A. Sometime about Christmas.

2 Q. How long had you heard of it before that time?

3 A. Not but a short time before.

4 Q. About how long? A. I don't know. It was some
5 two or three weeks maybe, or something like that.

6 Q. Then you heard of it about the middle of December?

7 A. I don't know whether it was three weeks or longer,
8 or shorter.

9 Q. Would you say it was as early as the first of November?

10 A. Sometime along about Christmas.

11 Q. You will not say whether it was earlier than the first
12 of November, or later? A. I just told you I don't
13 know.

14 Q. Then you are not prepared to swear that you did not know
15 it before the first of November? A. I told you it
16 was some time along about Christmas, but I am not prepared
17 to say what day, or what day of the month, or nothing of the
18 kind.

19 Q. You knew who owned the timber when you heard of it?

20 A. I heard Cramer.

21 Q. You knew where Mr. Cramer lived? A. I didn't know
22 anything about it.

23 Q. You did not go to Mr. Cramer and tell him that you have
24 a deed that is wrong, "and I ain't going to let you have but
25 three years, and if you don't cut it out you can't get it?"

26 A. Understand I have not seen Mr. Cramer, and I have not seen

1 him yet.

2 Q. Did not you try to find him?

3 A. I didn't know him, and would not know him if I would see
4 him now.

5 Q. You never tried to find him? A. No, sir.

6 Q. You never asked anybody where he lived?

7 A. I don't know whether I did, or not. I might. I heard
8 that he lived in Suffolk.

9 Q. You never thought the proper thing for you to do was to
10 go and tell Mr. Crarer "you have some timber on my land, and
11 you have not but two or three months to get it off, because
12 I am going to claim that I did not sign the paper as it is
13 written?"

14 A. How could I say it when I did not know the man, and did
15 not know where he lived.

16 Q. As a matter of fact, you did not tell Mr. Holland, when
17 he went there in May, that you were not going to let them
18 get this timber? A. I told him that there

19 was dissatisfaction about it, and that we would let him hear
20 from us shortly.

21 Q. Glance at that deed. I wish you would tell me if those
22 words (the extension clause) were in the deed at the time
23 you signed it? A. I can't see them.

24 Q. They are written words about the extension of two years?

25 A. I never saw Mr. Elihu write them. I saw him when he was
26 writing, but I was not looking at the pen. Those words along

1 there, I can't see them.

2 Q. I tell you that those are the words that grant the ex-
3 tension of two years written in ink, You don't know whether
4 they were there that day, or not?

5 A. No, sir.

6 By Mr. Holland:

7 Q. How long after the sale by you to Mr. Holland was it be-
8 fore Z.T.Holland informed you that the timber had been sold
9 to someone else? A. He was not talking to me
10 directly. He was speaking in the store. I heard it. That
11 was the first time of my hearing it. I don't know how long
12 it was. It might have been maybe three or four weeks, or
13 two or three weeks, but I am not sure exactly the time.

14 Q. Then within a month after you had sold to Mr. Holland,
15 you heard Mr. Z.T.Holland state that Mr. Gus Holland had sold
16 this timber to some other party? A. Yes, sir.

17 Q. You knew at that time that the provision as to ten inches
18 was in your deed, didn't you? A. No, sir, I did not
19 know it was in there, because he said he was not going to
20 cut it but twelve inches. I don't know whether they had
21 erased it, or whether it was still in there.

22 Q. Did not you state a few minutes ago that Mr. Joyner
23 read this contract? A. Yes, sir.

24 Q. Did not he read what was in it with reference to ten
25 inches? A. He read down to ten inches.

26 Q. He read that in the contract? A. Yes, sir, but

1 Mr. Gussie stopped him, and he said I bought it to twelve
2 inches, but I will not cut it lower than twelve inches.

3 Q. Did Mr. Joyner change the contract at all at that time?

4 A. I don't know.

5 Q. You saw him? A. I was sitting at his back
6 just as you are sitting at that man's.

7 Q. You could have seen it? A. Yes, sir.

8 Q. You heard him read it? A. Yes, sir.

9 Q. You knew that the provision as to operating a railroad
10 was in that contract? A. He read that, but he says
11 to me "you all will never see a railroad through here, be-
12 cause I am going to do my own cutting, and it is a mere form".

13 Q. Now, within a month afterwards, notwithstanding you knew
14 that Mr. Holland had sold his timber, you made no inquiry to
15 find out to whom he had sold it? A. No, sir.

16 Q. You did not want to make any complaint to the purchaser
17 about cutting the timber down to ten inches?

18 A. I never gave it a thought, because I thought he was going
19 to cut to twelve inches.

20 Q. The fact is that it was immaterial whether he cut it to
21 ten or twelve inches?

22 A. Do you mean to say I did not want him to cut it to ten?

23 Q. That you did not care? A. Yes, sir, that was
24 the understanding, that he was to cut it to twelve inches, and
25 leave the ten inch lumber to supply the places?

26 Q. When did you first find out that Mr. Cramer had purchased

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1 this timber? A. I don't know when it was
2 that I heard Mr. Crarer had purchased it.
3 Q. About when? A. Some time last year; some
4 time last summer, I think the latter part of the summer. I
5 am not sure, but I think it was.
6 Q. You knew the provision as to ten inches was in the con-
7 tract, and the railroad was in the contract?
8 A. I had not given it a thought, because I was so sure that
9 the man was going to cut it as he said that he was going to
10 cut it, and I thought if he sold it he would make the pro-
11 vision as he gave it to re.
12 Q. After you knew that he had sold it, you did not go
13 to Mr. Holland to see anything about it?
14 A. I went to Mr. Holland once or twice before the three
15 years were out, and I said "Mr. Holland, when is the mill
16 coming, and when are these fellows going to cut the timber",
17 and he said he didn't know, that they had some lumber where
18 they were, and they would come as soon as they could, and
19 I called his attention to it once or twice, I am sure, and
20 I told him that the time was fast approaching, and it looked
21 to me as if they were coming they should be coming along,
22 and he asked me concerning the time, how long was the time,
23 and I said three years, and he said it looked like they
24 ought to understand their business.
25 Q. Did you ask Mr. Holland whether he was going to cut the
26 timber? A. I heard he sold it.

- 1 Q. After you heard he sold, you did not expect him to cut it?
- 2 A. Of course I could not expect him to cut it after he sold
- 3 it.
- 4 Q. You heard in a month after you sold it that he had sold
- 5 it to somebody else? A. Yes, sir.
- 6 Q. And from that time to this you knew Mr. Holland was not
- 7 going to cut it? A. Yes, sir.
- 8 Q. You also knew that the contract provided that the timber
- 9 should be cut to ten inches? Mr. Joyner read it?
- 10 A. Yes, sir, and Mr. Gussie stopped and explained it.
- 11 Q. He read that? A. Yes, sir, and he told me that
- 12 he should not cut it lower than what he would buy it at.
- 13 Q. But he read it in the contract then?
- 14 A. He surely did, and Mr. Gussie stopped him and explained
- 15 it.
- 16 Q. You said just now that some estimates - some people
- 17 had been sent over the timber to make estimates; what was it
- 18 done for? A. I had it done myself.
- 19 Q. What was your purpose? A. To find out how much
- 20 lumber there was.
- 21 Q. Why did you want to find out how much was there?
- 22 A. In the first place, I wanted to see what the valuation
- 23 of the lumber was.
- 24 Q. Was that all? A. I don't say whether that
- 25 was all; or not, but that was one purpose.
- 26 Q. What was the other purpose? A. I don't know

1 that I had any other purpose.

2 Q. Now, you came to the Clerk's Office and examined these
3 contracts last year? A. Yes, sir.

4 Q. You knew just exactly what the contract stated?

5 A. Yes, sir.

6 Q. You never made any complaint to anybody?

7 A. Oh, yes, sir.

8 Q. You did not to Mr. Holland, did you?

9 A. Yes, sir, - not to Mr. Holland directly. I replied to
10 Mr. Elihu, "I was in Suffolk a few days ago", or whenever I
11 was there, "and I saw on the record that we were signed in
12 there for our timber that we sold Mr. Gussie for the full term
13 of three years with the additional two years making it five".

14 Q. What complaint did you make to Mr. Cramer?

15 A. I never made any complaint to him.

16 Q. When did you first get a letter either from Mr. Cramer
17 or some representatives of his? A. You are the first
18 I got a letter from.

19 Q. When did you get it - about this timber?

20 A. I think it was sometime in March that you wrote us con-
21 cerning the timber, and he wanted - -

22 Q. An additional time in which to cut it?

23 A. Yes, sir, and it was inconvenient to cut it then.

24 Q. Did not you send me word you would come down and see
25 about it? A. We did not say anything until

26 you came there.

1 Q. Did not you send me word you would come?

2 A. We told you.

3 Q. But before I went up there did not you send me word that
4 you would come and see me about the matter?

5 A. I think Mr. Rawles was to write you.

6 Q. Was that an understanding between you and Mr. Rawles
7 and the others that he should write me?

8 A. Yes, sir.

9 Q. That you all would consider it and let me hear from you?

10 A. Yes, sir.

11 Q. Mr. Rawles was authorized to represent you in the matter?

12 A. He was authorized to write the letter or to reply to you.

13 Q. Do you know what Mr. Rawles wrote me in reply?

14 A. No, sir.

15 Q. As a matter of fact, did not I come up there later on to
16 see you?

A. I think you came the first
17 of May.

18 Q. Did not I tell you that Mr. Cramer had an additional two
19 years in which to cut the timber? A. You did.

20 Q. Did not I tell you that we were willing to pay you an
21 additional amount for an additional three years?

22 A. Yes, sir.

23 Q. Did not you tell me you would let me hear from you?

24 A. Yes, sir.

25 Q. Did not you tell me at that time the deed was void?

26 A. I told you we were not satisfied at the record.

1 Q. Did you contend at that time that Mr. Cramer did not
2 have an additional two years in which to cut the timber?
3 A. I never explained anything of that line I don't think to
4 you.
5 Q. Did not you practically admit that he had an additional
6 two years in which to cut it by the payment of the interest
7 on the purchase price? A. No, sir, I told you
8 we would consider the matter and let you hear from us.
9 Q. Did not you say you would consider the matter with re-
10 ference to the three years? A. I don't know about the
11 three years, but I said we would study the matter, and let
12 you hear from us shortly.
13 Q. How long afterwards was it before you let me hear from
14 you? A. I don't really know how long it
15 was. I think Mr. Rawles said his wife was taken sick, and
16 he did not write probably that week at the time he was think-
17 ing about writing.
18 Q. Did you ever mention it at all afterwards?
19 A. I think he said he wrote the letter to you.
20 Q. Then whatever Mr. Rawles did in the matter, he did it as
21 your representative, as well as representing himself?
22 A. I don't know what he wrote in the letter, but our under-
23 standing was that we would be down shortly and we would look
24 after the matter.
25 Q. But you never came? A. We came, but we stopped
26 here.

1 Q. Where? A. Right here in this office.
2 Q. Just say at the office of Mr. R.W. Withers.
3 A. We got Mr. Withers to write a reply to you.
4 Q. Have you been tendered by Mr. Cramer \$72, which is the
5 interest on \$600 for two years? A. Yes, sir.
6 Q. How many times? A. Two or three times.
7 Q. State when it was done? A. I don't know, sir. It
8 was sent you up here. I mean to say I could not doubt the
9 day or time it was offered. I think the last time was the
10 third day of July.
11 Q. When was the provision of two years more by paying lawful
12 interest put in this contract? A. I don't know, sir,
13 when it was put in.
14 Q. You don't know whether it was there when you signed it?
15 A. They did not read it to me.
16 Q. You did not read it? A. No, sir.
17 Q. You are not prepared to say it was there?
18 A. I did not bargain it, and I had no reason to believe it
19 was there until I saw it.
20 Q. But you would not say those words were not there?
21 A. I could not say it because I did not know, but if it
22 was there I had no knowledge of it.
23
24 RE DIRECT EXAMINATION
25 By Mr. Withers:
26 Q. Did Mr. Cramer, or anyone else, tender you \$72, or any other

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1 sum, prior to February 6th, 1906?

2 A. No, sir. Mr. Holland, the Colonel, was there in May,
3 and we promised to let him hear from us, and when we let him
4 hear from us it was through you, and then Mr. Gay come out
5 there and offered me the \$72.

6 Q. At the time Col. Holland came to see you, did you then
7 decline to take the \$72?

8 A. The Colonel says to us "we are here prepared to pay you
9 the interest to-day", and I said we are not satisfied over this
10 matter, there is some misunderstanding about it, and we are
11 not ready to receive the interest," and did not accept it, and
12 told him we would let him hear from us.

13 Q. And then you came to see me? A. Yes, sir.

14 Q. And engaged me as your attorney in this matter?

15 A. We did.

16 Q. You say you had some one to go over the land to estimate
17 the value of the timber? A. Yes, sir.

18 Q. Please state what is the present value of the timber on
19 the land sold by you? A. Did you get my letter I
20 sent you?

21 Q. Yes? A. That is Mr. Jones' calculation.

22 Q. Do you remember? A. I am not sure.

23 Q. Do you remember, of your own knowledge, what this estimate
24 amounted to? A. No, sir, it was up in the

25 teens, about eighteen or nineteen, or something like that.

26 Q. Eighteen or nineteen hundred? A. Something like tha.

1 I sent you the letter, and he made his own calculation, and
2 his own figures with his own hand. I don't know whether
3 he had calculated it, or not. He had put down the present
4 market value.

5 Q. I read a paper as follows: "Mr. Jackson Howell. You
6 will please find estimate of pine timber on your home tract,
7 four hundred and ten thousand feet and forty-six thousand
8 feet on the other tract, making four hundred and fifty-six
9 thousand feet, at \$3.50 per thousand. This measures ten
10 inches and up across the stump. J.P. Jones. 5/19/06".

11 A. That is it.

12 Q. What did you get for this lumber when you sold it to
13 Mr. Holland? A. He bought it by the lump as
14 it was.

15 Q. How much? A. He bought the home place on
16 that side for, I think, \$60 or \$62, and I think, including
17 both places \$600. It was not sold by the thousand.

18 Q. Do you know, or did you hear, or did anybody ever tell
19 you, how Mr. A.A. Holland sold the timber to Crocker Brothers,
20 or how Crocker Brothers sold to Cramer as to sturpage, whether
21 it was sold to cut to ten inches or to twelve inches?

22 A. No, sir, I knew nothing at all about it before I came to
23 the records. I asked Mr. Holland concerning the cutting
24 of it, and he replied asking me about the time, and I told
25 him three years, and then I asked him if it was not three
26 years, and he said he didn't remember only as it was at the

1 Clerk's Office, and I told him I knew that the time was three
2 years. I was talking to him.

3 Q. That was when you asked him when the people to whom he
4 sold was going to cut? A. Yes, sir, we were
5 anxious for a mill to come in there. The Crocker Brothers
6 were a right good ways, and all hands wanted a mill to come
7 in there to build. Mr. Gussie, at the time he sold, was
8 sure a saw mill would come, and they had calculated as to what
9 kind of job they could get.

10 Q. I understood you to say that he said he would put the
11 mill in there and run it himself? A. Yes, sir, he
12 told me so.

14 RE CROSS EXAMINATION

15 By Mr. Holland:

16 Q. Have you the letter I wrote you in March, 1906?

17 A. Yes, sir, I have it, but it is at home.

18 NOTE: It is agreed between counsel that a letter
19 to J.A.Rawles with reference to the same matter
20 may be filed marked exhibit B. and referred to as
21 indistinctly the same as the letter written to A.J.
22 Howell.

23 -----oOo-----

24 At 1 o'clock the further taking of depositions in this
25 case adjourned until 2 o'clock.
26 -----oOo-----

AFTERNOON SESSION

September 20, 1906.

Met at the expiration of the recess.

PRESENT: Same parties as heretofore.

JOHN A. RAWLES, being duly sworn, testified as follows:

Examined by Mr. Withers:

Q. Please state your name, age, residence and occupation; and if you know the parties to this suit?

A. John A. Rawles; age thirty-six; residence near Holland; occupation farming; I know the parties to this suit.

Q. Are you the owner of some land lying near the lands of J.L.Harris, A.J.Howell, David Milteer and others?

A. Yes, sir.

Q. Did you sell the timber from your land to Mr. A.A. Holland some time in the winter of 1903?

BY MR. BURGESS: The question and any answer that may be given thereto is objected to upon the ground that it deals with a transaction entirely separate and distinct from the one at issue, and for the reason that any evidence the witness may give as to sales made by him would be irrelevant and immaterial.

A. Yes, sir.

By Mr. Withers:

Q. Was this about the same time that your neighbors sold to Mr. Holland?

A. I think so.

Q. Now, please state, Mr. Rawles, in your own words, just how you sold this timber to Mr. Holland, and what your agreement was verbally before the contract was brought to you?

A. Mr. Holland came up and wanted to see the timber. We went down to the woods to start over the line. When we reached the woods I told him I would tell him one thing that would save us possibly going through the woods, and he said "what is that", and I said Jonas Lawrence wants to buy, and he wants five years time but I would not sell to my father for five years, and if he wanted that long we need not go to the woods, and he said what would I sell for, and I said three years, and he said that would be as long as anybody would want, and we proceeded to walk the lines between Parker and Rawles and myself, and between the Gratt and Luke tract and myself that adjoins there, and the back line between myself and Darden. We did not trace the line between father and myself at that time, but came out through the timber. When we came out he wanted a ten days option, which I granted. On the second visit up there he had a gentleman with him, and introduced him as Mr. Joyner, who wanted to do the logging for him, and that day I was over at father's, and he said he wanted to walk the line between father and myself. We did that, and then we turned and came out through the timber so Mr. Joyner could get a view of the condition of the woods. I suppose that was his object. Then Mr. Holland and Mr. Joyner, after they come out, went on some where else, I

1 don't know where. Then when Mr. Holland came to sign the
2 contract, or have it filled out, he asked me if I did not
3 remember that the Presidential Campaign would come on during
4 that three years, and I told him I did. He said then in case
5 of a money panic during the Presidential campaign, or depression
6 in the lumber market, how about giving him two years more to
7 cut the lumber if it would not justify him to cut the lumber
8 during the panic or Presidential Campaign, and I told him
9 during such a thing I would give him the privilege of two years
10 more, and when he come to fill the contract out I wanted some
11 money. I am a little fast there; those words were to be in-
12 serted in the line during a depression in the lumber market
13 during a Presidential Campaign, or a money panic was my under-
14 standing. He was to move a mill in there that had been
15 operated by the Joyner Brothers near the Seaboard Road, and
16 he would try to get it there the last of April, and if not the
17 last of April in May, anyhow. In filling out the contract
18 Mr. Joyner passed it over to me to read, and I think the
19 inserting of the two words was the last clause to be filled
20 out, and it was near night, and he said you need not begin
21 at the first and read down, as I have read all that to you as
22 I filled in, and he said you can start right here (that was
23 where he stopped filling in) and read on. For that cause I
24 did not notice the two years as it is on record, instead of
25 calling for the money panic as it should be in the Presidential
26 Campaign. Then I only read the contract from this clause to

1 where it calls for free right of way for railroad and all
2 necessary tie timber free of charge. I told Mr. Holland
3 that I would not sign it unless he scratched that out. He
4 told me that it was not worth while to scratch anything, that
5 he expected to cut it himself, and expected to have his mill
6 in there, as I before stated, in April or May; that there would
7 not be any trouble about railroad, and I told him at the time
8 I would not have a railroad on my place for \$500. After his
9 filling it out like this, (I had been knowing Mr. Holland
10 all my life, and I thought he was a man of his word, and was
11 going to do what he said he would do, and by his urging that
12 there would not be anything like a railroad, and he was going
13 to cut it, and I wanted lumber and he would cut it when he
14 came there) I signed the contract knowing in case of the
15 money panic those two years were in there, not reading it over

16 Q. When did you first learn that the contract which was re-
17 corded granted two additional years without naming any condi-
18 tion about a money panic or a Presidential election?

19 A. Last December. I think it was the first week. If you
20 will allow me to ask Mr. Babb I can tell you the date. When
21 was it you picked off the peas?

22 Mr Babb: The first week in December.

23 Witness: I brought father down to the Union Machine Works,
24 and I went down there, and Mr. Burgess was at the desk, and
25 Mr. Gomer read it to me, and at that time I swore I would go
26 in with a wagon and cut every stick of timber so that they

1 would not get anything over ten inches. After worrying and
2 fooling over it I decided I would not do anything, and I went
3 back home and told father, and he said he did not know any-
4 thing except about three years, and we came down, and his was
5 out on the ninth, and mine was out on the 6th of February.

6 By Mr. Withers:

7 Q. Were you surprised when you found the contract as you
8 did in the Clerk's Office? A. Yes, sir, the first
9 of my knowing anything about it I saw Mr. Holland at Holland.
10 I think that was the first of November, or during the month,
11 and asked if the time was not out on that lumber, and he said
12 he did not know, that it was at the Clerk's Office, and I said
13 if the man was going to put the mill in in 60 days he could
14 cut it in the three years. I called this wording over to
15 him about being filled in, and he said he didn't remember about
16 the wording, but I could find it out, that he had a good many
17 to fill out, and it had slipped his memory.

18 Q. How should the contract have read with regard to an
19 extension? A. Three years within which
20 to cut and remove the timber, and in case of a money panic
21 during the Presidential Campaign, or a depression in the
22 lumber market that he should have an additional two years
23 by paying 6 per cent interest on the purchase price.

24 Q. You say Mr. Joyner, when he handed you the contract to
25 read, indicated a point at which you were to begin reading.
26 Was this point indicated by Mr. Joyner after that part of the

1 contract which granted the time in which to cut the timber?

2 A. Yes, sir, it begun right there at the next line right
3 underneath it.

4 Q. You say he told you it was not worth while to read above
5 the point that he showed you? A. He said he had

6 read it all over, and to save time. It was about sundown.

7 Q. It was your understanding that Mr. A.A.Holland was to
8 have a saw mill there, and operate it himself?

9 A. Yes, sir.

10 Q. Was this a part of the inducement for you to sell the
11 timber? A. Yes, sir. I had refused

12 a man several times who had been after me six months, my
13 neighbor, who wanted it for five years, but I would not sell

14 for five years because I said a man would be a fool to sell
15 timber for five years with a little insignificant sum of six

16 per cent on it. I was after the money, not the timber, and
17 not the part of playing with it.

18 Q. Did you want a saw mill located near you?

19 A. Yes, sir.

20 Q. Was it an inducement for you to sell to Mr. Holland?

21 A. Yes, sir, I wanted lumber, and was hauling some to a
22 mill two and a half miles. He said I could continue hauling

23 to get my weather boarding, but he would be there to get the
24 framing I would want. I continued to haul for the weather

25 boarding, as I was half through getting it out, and I waited
26 until June, and he had not come, and I had to get timber from

1 my father and haul to Niblett's Mill two and a half miles to
2 get the house put up in August.

3 Q. Does that contract read "and two more years if necessary?"

4 BY MR. BURGESS: The question is objected to on the
5 ground that the contract itself is the best evidence..

6 A. I don't remember just that one particular clause, because
7 I have only read the contract twice. I do not have any copy.

8 By Mr. Withers:

9 Q. Has the value of timber increased or decreased since
10 February, 1903? A. Increased steadily and the
11 growth too.

12
13 CROSS EXAMINATION

14 By Mr. Burgess:

15 Q. Mr. Rawles, as I understand you, in the year 1903 Mr.
16 Holland came to you to buy your timber; that you told him
17 you would not grant an extension of five years; that you de-
18 clined to grant that extension to Jonas Lawrence, and he
19 said three years was all he wanted, and that you then went
20 over the lines with the exception of the line between yourself
21 and father, and when he came back he brought a man named
22 Joyner. What Joyner was it?

23 A. I don't know, but he said he was a relative of the one
24 at Holland.

25 Q. That this man said he was going to do the logging?

26 A. Yes, sir.

1 Q. And Mr. Holland asked you if there was a money panic
2 during the Presidential Campaign, or a depression in the
3 lumber market, if you would not grant him a further extension,
4 and you replied under those conditions you would?

5 A. Yes, sir, I wanted him to get value received.

6 Q. Did you at that time expressly stipulate that it should
7 be incorporated in the contract?

8 A. What?

9 Q. That the two years should only be granted on those condi-
10 tions? A. Yes, sir, and Mr. Holland was the

11 man who worded it that way.

12 Q. That was verbally that day? A. That was the night
13 the contract was drawn. There was not anything said until
14 the night when I went to sign it.

15 Q. And nothing was said until Mr. Holland and Mr. Elihu
16 came to draw up the contract? A. Nothing was said
17 about it until that time when he came to fill the contract
18 out.

19 Q. Then Mr. Joyner, I suppose, sat down at the table to
20 write the contract? A. Yes, sir, he was writing
21 it at the time Mr. Holland suggested it.

22 Q. And he had one of these printed forms?

23 A. Yes, sir.

24 Q. And I suppose you were filling in the boundaries?

25 A. He was filling it in.

26 Q. You gave him the boundaries? A. Yes, sir.

1 Q. Finally he finished, and then said to you "it is not
2 necessary for you to read over above this point about the
3 three years"? A. Yes, sir.

4 Q. "That I have filled it out and read it as I went along"?

5 A. Yes, sir.

6 Q. "That you can begin right here"? A. Yes, sir.

7 Q. And you began there? A. Yes, sir.

8 Q. How long did you read before you stopped?

9 A. Until the right of way of the railroad and all free tie
10 timber.

11 Q. You did not read anything above that?

12 A. No, sir. and nothing below that because he said the
13 balance was mere form.

14 Q. After you got there you stopped? A. Yes, sir.

15 Q. Was that clause above the three years clause or below?

16 A. Below it.

17 Q. Below it? A. That is my understanding.

18 Q. Then if you read a clause about the railroad it was
19 written below the other clause - the three year clause?

20 A. That is my understanding. I am not familiar with the
21 contract because I have never read it all over.

22 Q. The only question I wanted to bring out was that you
23 started where Joyner left off? A. Yes, sir.

24 Q. And when you got to this he told you that he would operate
25 it, and there was no danger of a railroad?

26 A. I asked, and I said I would not sign it with a railroad,

and he said there is no danger of a railroad, as I will cut it myself.

Q. Was it scratched out? A. No, sir, because I thought he would do what he said he would do, and I was dealing with him fair and square.

Q. Mr. Joyner did pass the contract over to you to read, did he not? A. Yes, sir.

Q. If you had not taken his word for it, there was no reason why you should not have read it? A. No, there was nothing in the world to prevent me from reading it. I was at home. It is true it was sunset, but I was at home, and they were away from home.

Q. You read and write fluently, don't you?

A. I try to, yes.

Q. Now, after that, how long was it before you heard he had disposed of this timber? A. I never heard anything of it for twelve months, and then it was indirectly, and did not concern me. There was a mill shipped to Elwood, nothing but a frame and the carriage. I asked the agent whose it was, and he said he thought it was shipped to a man named Crocker, but he had orders to ship it to Suffolk, and it stayed there two or three weeks.

Q. You never said anything to Mr. Crocker or Mr. Crarer about these contracts? A. It was not my business. I sold to Mr. Holland.

Q. When did you first hear that there was a rumor that there

1 was a difference in the contracts?

2 A. I did not hear it. I came to look, and did not take any
3 hearsay.

4 Q. I believe you stated that the day Capt. Gomer showed you
5 the contract I was in the office? A. Yes, sir.

6 Q. I have some indistinct recollection of the event. Do
7 you recall who else was in the office at the time?

8 A. There was a young man by you, and you all were looking
9 over the records, I think, and you asked Mr. Gomer some-
10 thing about a contract, if it did not get recorded that day
11 would it be all right, and he told you whenever a contract
12 or any agreement reached the Clerk's Office that it was
13 virtually recorded; that if it got into the office, and did
14 not go on the book until the next day, it would mean it was
15 virtually recorded while it was in the office.

16 Q. Was not the young man a little gray?

17 A. I don't remember.

18 Q. Do you know Mr. C.J. Dennis? A. No, but I think
19 I have seen the man at the saw mill up at Copeland.

20 Q. The saw mill operated by Mr. Lynn?

21 A. Yes, sir; I think I saw the young man up there who was
22 with you in the office at the time.

23 Q. Do you remember whether you heard anything said about
24 a lis pendens? My recollection is that on that day we were
25 preparing and filing a lis pendens?

26 A. I don't remember anything about it.

Q. You do not recall any of the conversation we had?

A. No. Mr. Gomer simply looked up and said there is the man who copied them for Crocker Brothers.

Q. The reason I ask you about it is that my impression is that it was in October, and I am trying to fix the paper we were recording on that day.

A. I thought it was December.

Q. Whenever it was, whether in December or earlier, did you mention to Mr. Holland, upon your return or at any time afterwards, the fact that you misunderstood the contract?

A. I did not. I never said anything more to Mr. Holland. It was not necessary to go to Mr. Holland when he had sold it to somebody else. All I was waiting for was for the three years to expire, and the man to come and cut it. If they were amind to sleep over it it was not anything to me.

Q. Then, if I understand you, you did not notify any one of the difference in the contract? A. No, sir.

Q. And that you waited until the time expired?

A. Yes, sir.

Q. And that you waited in the hope that the time would run out, and that you could take advantage of the alteration?

A. I did not take advantage.

Q. I mean of the alteration? A. No, sir; when the three years were out I claimed the timber was my own. It called for a clean clear cut three years.

Q. If your sole object was to get this timber off in three

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1 years, why did not you notify Mr. Holland, or the then owner
2 that it could be removed? A. I did not know
3 anything about the then owner. I heard that he had a mill in
4 Carolina. It was not my business to run to another man; that
5 was his lookout.
6 Q. Do you remember what you said to me, in the presence of
7 that gentlemen that day, in regard to a money panic or a
8 depression in the lumber market? A. I did not say any-
9 thing to you. I was speaking to Mr. Gomer. I don't remember
10 speaking to you at all.
11 Q. Did you require Mr. Holland, or ask him, to incorporate
12 in the contract any provision about the location of his mill?
13 A. I did not.
14 Q. You say when you went back to Holland that you did not
15 mention it to anybody interested, either Mr. Holland or any of
16 his subsequent grantees? When was the subject first mentioned
17 to you by Mr. Holland or Mr. Craner or any of their representa-
18 tives? A. I had a letter from Mr. E.E. Holland.
19 Q. When did you get the letter? A. I don't remember
20 the date. You had the letter here this morning that will
21 give the date.
22 Q. I now hand you a letter which has been filed marked
23 exhibit B; will you please tell me if you received this letter?
24 A. Yes, sir, I received it and brought it down here in my
25 pocket.
26 Q. Did you reply to this letter? A. No, I did not.

1 I do not think I wrote you but one letter, and I have a copy of
2 what I wrote at home.

3 Q. What next took place after you received this letter?

4 A. He asked me there to let him hear from me, and if I answered
5 that one I don't remember doing so. I know I did write to him
6 after he came to see me, he and Mr. Gay, but I have a copy at
7 home of what I did.

8 Q. Then, if I understand you, you took no notice of this
9 letter - that is, you do not totally ignore it, but made no
10 reply to it?

A. I did not intend to ignore it.
11 I did not care a snap which way the world went, because I did
12 not think they had a right to the timber, that the time had
13 expired, and they had no right to it. The interest on the
14 purchase price had not been paid, and they had never said any-
15 thing about looking into the matter until I got that letter,
16 and then all got a letter at the same time. I think they were
17 all the same. I saw one or two. Then I came down to see if
18 I could do anything about it. We claimed three years the
19 limit.

20 Q. When did you write to Mr. Holland?

21 A. I don't remember.

22 Q. I now hand you a letter dated Holland, Virginia, March
23 15th, 1906, addressed to Col. E.E.Holland, signed J.A.Rawles.
24 Will you tell me if you wrote that letter?

25 A. Yes, sir. It slipped my memory.

26 NOTE: The same is filed marked exhibit C.

1 Q. Did you, at any time, say to Mr. Holland that you did
2 not propose to grant a further extension, as you did not
3 recognize that the grantee had any rights?
4

5 A. I did.

6 By Col. Holland:

7 Q. When did you mention to me that the grantee had no further
8 right within which to cut the timber?

9 A. The day you and Mr. Gay came up there I told you the
10 three years was the limit. I don't remember the date, but
11 I know it was a rainy day, and I got wet.

12 Q. Were we not at that time trying to negotiate with you
13 for an additional three years?

A. Yes, sir, making

14 five years from February, 1906.

15 Q. Did you not then say that you would see the other parties,
16 consult with them, and let me hear further from you about it?

17 A. I did.

18 Q. Did you refuse at that time to give Mr. Cramer the
19 additional two years within which to cut?

20 A. I did.

21 Q. Unless some other arrangement was made?

22 A. You offered me the interest, and you offered me twelve
23 per cent, and then I would not accept any and would not grant
24 you a further extension; I told you I would consider the
25 matter and let you hear from me later. That was our verbal
26 understanding.

Q. I offered you twelve per cent, did I not, on condition

1 that you would grant an additional two years within which
2 to cut the timber? A. Yes, sir, that is where

3 the twelve per cent came in.

4 Q. I at that time offered to pay you the forty-eight dollars,
5 the annual interest for two years?

6 A. Yes, sir.

7 Q. Have you not since accepted that amount, and agreed to
8 give the two years additional time within which to cut the
9 timber?

10 A. I have. Mr. Gay said that they
11 were trying to sell it to a Baltimore firm, who bought out
12 Grati-Jones and Wiggins. They said that they did not care
13 to fool with it, as they had two years more, as I understand
14 it, on the contract that they bought from Dr. Barnes' estate,
15 and that they had told Mr. Wiggins to set these parties on
16 them, that they would like to mill it with little mills, and
17 I told him if he would do anything to keep a railroad out
18 there that I was the man he was looking for, that I would
19 rather lose two or three hundred dollars than to have a
20 railroad there, and as long as this cloud hung over it, and
21 the parties did not sign the receipt, that he could not dispose
22 of it. After that I was tired and aggravated, and I told them
23 I would accept the \$48, and after the time was out no man
24 should stick an axe in it. They have ample time now to get
25 it off.

26 Q. They have two years from the 6th day of February, 1906?

A. Yes, sir.

Q. Within which to cut and remove your timber?

A. Yes, sir, until February 1908. They have twelve months after the coming February.

Q. Why did you grant that additional extension?

A. Simply to get clear of the mess, and not be worried with it any more. I told you when you were up there I did not think they could cut it because they had failed to comply with the contract from my way of looking at it. If I understand the contract, it only granted the privilege by paying the interest. It said three years, and if it was not out in three years they would have to pay the 6 per cent interest, and they have not paid it.

Q. Was not that the only ground on which you refused at that time to accept the interest?

A. No, sir. I proposed to you to get a man to go in and estimate the lumber, and see what was in there when we were talking about the five year extension. I would not consent to anything without the estimation.

Q. You do not understand my question. The question is did you not at that time object to accepting the interest and giving the two years extension because you were of opinion that inasmuch as the interest was not paid prior to the 6th day of February that the parties had no further interest in the lumber?

A. Yes, sir, and it was not in the contract as it should have been. My opinion and the way the contract read, it was only a three year contract, and these two years were only a

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1 condition, and there had been nothing at all to cause him
2 not to mill the lumber. He had a mill all the time.

3 Q. Please state in full, so far as you recall it, every
4 objection you made to me about extending this contract?

5 A. My first was that I thought the contract was for three
6 years, and you told me so far as the interest being paid it
7 did not amount to anything at all, and I told you I thought
8 it did; that even if the court would allow them the two years
9 that they had failed to comply with their part of it, and that
10 they ought to have paid this interest before this three years
11 time went out, and after the three years I considered the
12 thing was out of date, and you said you did not think so, that
13 they could pay the interest at the end of two years as well as
14 at the beginning, and I told you I was going to see about it,
15 before I did anything else, that I had been beat. I told
16 you the lumber had greatly increased.

17 Q. Yes. If this interest had been offered to you prior
18 to the 6th day of February, would you have accepted it?

19 A. I don't know whether I would, or not. I might have
20 done so this way, without giving it any thought, or without
21 seeing any one about it, but after giving it a little thought
22 I would not have done it, and that is the reason I did not
23 accept it the day you were there. After I found out how
24 it was, and I had been advised by one lawyer, and also by
25 Captain Gomer, that I might go to work and fight it, and
26 would not get anything, and the day you were there I told you

1 I was tired of it, and you said I was playing a losing game,
2 and I told you I would further consider the matter.

3 Q. How much was your timber worth?

4 A. At the time I sold it to Mr. Holland?

5 Q. Yes? A. I don't know.

6 Q. Did he pay you a fair price for it?

7 A. Paul Jones said the way manufactured lumber was selling,
8 if he had cut it at the time he promised, he paid a fair
9 price.

10 Q. Then timber was low at the time Mr. Holland made this
11 deal? A. Yes.

12 Q. What was a fair price for the timber at that time?

13 A. I don't know.

14 Q. Something from \$1.25 to \$1.50?

15 A. I think most of it selling on the stump then was about
16 \$1.00. I never asked any questions about it. According to
17 the way I sold mine, and the estimator was there, he did not
18 pay me \$1.00 a thousand.

19 Q. Do you know anything at all about what either Mr. Holland
20 or Mr. Joyner said to A.J. Howell at the time this contract
21 was made? A. No, sir, I don't know anything
22 about his.

23 Q. You were not present at the time the contract was made?

24 A. No, sir.

25 Q. You know absolutely nothing about it? A. Except
26 what I heard him say.

1 J.L.HARRIS, (Colored), being duly sworn, testified
2 as follows:
3 Examined by Mr. Withers:
4 Q. State your name, age, residence and occupation, and
5 if you know the parties to this suit?
6 A. J.L.Harris; age forty-eight years; residence South
7 Portsmouth, Virginia; occupation preacher; I know the parties
8 to this suit.
9 Q. Did you own a piece of land in the neighborhood in which
10 A.J.Howell and David Milteer live? A. Yes, sir.
11 Q. Did you sell the timber on this land to Mr.A.A.Holland
12 about February, 1903? A. Yes, sir.
13 Q. Please state how you bargained with Mr. Holland?
14 BY COL. HOLLAND: The question is objected to be-
15 cause it seeks to elicit testimony that is irrele-
16 vant, and for the further reason that so far as
17 some of the parties defendant are concerned, no
18 evidence tending to vary, modify or contradict the
19 contract entered into between the parts would be ad-
20 missible.
21 A. I bargained with Mr. Holland at three years.
22 By Mr. Withers:
23 Q. That is he was to have three years in which to cut the
24 timber? A. Yes, sir.
25 Q. Who was with him at that time? A. Mr. Joyner.
26 Q. Did they fill out the blank at that time? A. Yes, sir.

1 Q. Please tell how that was done?

2 A. Mr. Joyner filled the blank out, and when he got to
3 the time he said "how long do you want"?

4 Q. Said that to who? A. He raised up from
5 writing, and looked up at Mr. Holland, and I and Mr. Holland
6 were standing there, and Mr. Holland said "I am expecting to
7 put the mill there, and I reckon three years, as that is the
8 custom in writing such contracts", and I said "all right", and
9 Mr. Joyner wrote it down three years.

10 Q. Did you see him write it down? A. Yes, sir.

11 Q. You were standing by him? A. Yes, sir,
12 over him.

13 Q. Reading it as he wrote? A. Yes, sir.

14 Q. And you distinctly remember that he inserted three years?

15 A. Yes, sir, I saw it, and looked at it.

16 Q. And nothing more? A. And nothing more.

17 Q. Was there anything said to you at that time about any
18 additional time? A. No, sir, I don't remember
19 anything being said to me about any additional time.

20 Q. Then or at **any** time? A. It seems to me that Mr.
21 Holland did mention to me something about money panic, or
22 lumber going down, or something of that kind - if anything
23 like that was to happen he would want two years more, or
24 would allow two years more; I remember something about that.

25 Q. Was that agreed to by you, or put in the contract?

26 A. It was not written in the contract. I did not see it in

1 in contract.

2 Q. Did you agree to any such extension as that?

3 A. Yes, sir, I told him in case of a money panic or lumber
4 depression, or anything of that kind, I would allow him the
5 two years.

6 Q. But that was not put in the contract?

7 A. No, sir.

8 Q. When did you first learn that the contract, as recorded?
9 read for two additional years? A. I heard of it before
10 I learned of it. I never went to look at it at all.
11 Winter before last I heard of it, and asked Mr. Holland about
12 it one day.

13 Q. What did he say? A. Mr. Holland referred
14 me to the record at the Clerk's Office. He did not remember,
15 he said, at that time.

16 Q. Did you go to the record in the Clerk's Office?

17 A. No, sir, I did not go.

18 Q. When did you really have any knowledge about this thing?

19 A. I received a letter from Mr. Holland.

20 Q. What Holland? A. Mr. E. E. Holland there.

21 Q. That is the first you ever positively knew about any
22 additional two years? A. Yes, sir.

23 Q. Have you received this interest for any additional two
24 years? A. No, sir.

25 Q. Has it been offered you? A. No more than through
26 Mr. Holland's letter, and I wrote him a card telling him

1 that I would call at his office to see him about the matter.

2 Q. Did you call? A. No, sir, I have not called.

3 Q. Were you not also a school teacher during this time, or

4 about that time? A. The time I sold the

5 lumber?

6 Q. Yes? A. No, sir.

7 Q. You have been a school teacher? A. Yes, sir, but

8 I have not taught school since 1897.

9 Q. You can read and write? A. Yes, sir. I

10 taught many a person to read and write.

11 Q. Did you understand that Mr. A.A. Holland was going to

12 erect a mill in that neighborhood? A. Yes, sir, he

13 told me that he was expecting to put the mill there soon -

14 that he would say three years, but he was expecting to put

15 the mill there sooner than three years; that he expected it

16 there in a few weeks.

17 Q. Was this an inducement to your selling the timber?

18 A. No, sir, it was no inducement to me. I was expecting

19 him to put it there, but it was no particular inducement to

20 me.

21 Q. Did you ever see a contract for timber from Elisha Cope-

22 land to Mr. A.A.Holland? A. No, sir.

23 Q. Did you hear Mr. Holland say how much time he had on

24 some of this other timber bought around in the neighborhood?

25 A. No, sir.

26 Q. Have you ever seen the contract you signed since the day

1 you signed it?

A. No, sir.

2 Q. Have you examined the records showing where it was re-
3 corded?

4 A. No, sir, I have not been
5 to the court house at all.

6 CROSS EXAMINATION

7 By Mr. Holland:

8 Q. Do you own the land on which is the timber you sold to
9 Mr. Holland? A. I did own it, but I don't own
10 it now.

11 Q. Is it not true that you wrote me a letter stating that
12 you had sold it to other parties?

13 A. I wrote you a postal card.

14 Q. A postal card stating you had sold it to other parties,
15 and that I might see them about it?

16 A. No, sir.

17 Q. You did not? A. I wrote you a postal card,
18 and stated I had received your letter, and would call at your
19 office in a few days, and see you about the matter.

20 Q. Did not you state that you had sold the land to other
21 parties, and I could see them about it? I put you on your
22 guard?

23 A. I don't remember whether I put it
24 in there that I had sold it, but I remember writing you that
25 I would call at your office and see you about the matter.

26 Q. Is it not true that you have sold it to other parties?

A. Yes, sir.

Q. When did you sell it?

A. The 12th day of

December, 1905.

Q. Then at the time you received my letter, as a matter of fact, you had disposed of the land, and had no further interest in the timber?

A. In the land, and at the time of selling the land I told the man I could not sell him the timber, that the timber had been sold before, and that I had the timber excepted. I told him so when he and I bargained, and when the deed was written I told him so in the presence of other persons - of another person.

Q. To whom did you tell him the timber had been sold?

A. I don't remember whether I told him it had been sold to A.A.Holland, or not. I told him I had sold the timber.

Q. And as a matter of fact you did not undertake to sell the timber at all?

A. No, sir, I did not undertake to sell the timber. I told him I could not, because I had sold it.

Q. You do not now claim the timber?

A. I did not claim the timber, because I had sold it.

Q. You say you can read, and you have been a school teacher?

A. Yes, sir.

Q. And you stood right behind Mr. Joyner all the time that he was drawing the contract?

A. He was sitting

down, and I was standing up.

Q. And you remember distinctly that Mr. Joyner did not insert in the contract any additional time within which to cut

1 the timber?

A. I did not see it.

2 Q. Are you prepared to say - and I put you on your guard as
3 to this - are you prepared to say that at that time, and at
4 the time you signed the deed, that there was not in the
5 contract you signed the provision giving the additional time
6 within which to cut it?

7 A. If it was in there I
8 did not see it.

9 Q. I would like for you to answer my question directly.

10 You have stated that, as a matter of fact, you saw Mr. Joyner
11 write the contract?

12 A. I saw him write the
13 three years. I was looking at him when he wrote it. It was
14 a blank, and when he got through he halted and asked the
15 question what time - how much time do you want, and then he
16 spoke and said "one or two years", and Mr. Holland said "three
17 years, but I am expecting to put the mill there soon, but three
18 years being the custom in writing such contracts".

19 Q. But, as a matter of fact, something was said afterwards
20 about the two years additional time?

21 A. Mr. Holland mentioned that during the time he was in my
22 house, and during the time we were there together about the
23 money panic or some depression in the lumber market, or
24 something of the kind, that he would want two years.

25 Q. Is not it a fact that you first heard about the money
26 panic after the suit was brought? A. No, sir. If
my memory 'serves me aright, he mentioned something about it
at that time, at the time of the contract.

Q. And before you had signed the contract?

A. I had not signed it. I don't remember whether I had signed it, but something of that kind was mentioned. I think it was.

Q. Are you prepared to say that after you and Mr. Holland had that conversation that at that time Mr. Joyner added those additional words? A. If he added them I did not see him.

Q. You were looking at him? A. I was looking at him when he wrote the words "three years".

Q. You were not looking at him when he wrote the balance of the contract? A. My attention was called at the time, and I looked down.

Q. And your attention was called off, and you don't know what else he put there? A. He handed me the contract, and I read it.

Q. How long after? A. After he got through before I signed it.

Q. How long did it take him to get through?

A. I don't know. There was not much more writing done. I called Mr. Holland's attention to a few things, and one was the right of way, and as to whether I would have the right to use that timber in the way of fencing and wood, and he said I would.

Q. All those things were put in the contract after you saw the three years? A. I called his attention, and

1 he said I would have the privilege.

2 Q. And they were put in after you saw the three years?

3 A. Using fencing and wood was not put in the contract. I
4 only asked him would I have the privilege of getting wood or
5 fencing rails and slabs, and he said I would have the privilege
6 so I would not be extravagant in it.

7 Q. Is not it a fact that Mr. Joyner wrote the entire con-
8 tract? A. I think a part of it was printed.

9 Q. Do you know what part was printed and what part he had
10 to write? A. I knew the part of the three
11 years was a blank. but I could not say all that he had to
12 write. I know it commenced like a deed, and I said "Mr. Joyner,
13 this is a deed", and he says "yes, but it has no particular
14 reference to more than the timber", and when the three years
15 is out the deed will be null and void.

16 Q. How long after you saw the three years before you actually
17 signed the contract? A. A very little time.

18 Q. Was any more writing done? A. Yes, sir, because
19 I wrote afterwards.

20 Q. Was anything more written by Mr. Joyner?

21 A. There might have been some more writing done.

22 Q. When did you first think of the three years after the
23 contract was drawn? A. I thought about it all
24 the time, and I will tell you why: My intention was to clear
25 the land up, and I kept it in my mind all the time when I
26 could clear up, and I would be glad when the three years would

1 be out because I had ditched the land, and had grubbed it, and
2 did not want to interfere with it until the time was out.

3 Q. But you agreed if there was a money panic or a depression
4 in the lumber market you would give an additional time?

5 A. Yes, sir, Mr. Holland mentioned something like that, but
6 I do not think it was put in the contract.

7 Q. But you do not recall that it was put in the contract?

8 A. I do not think it was.

9 Q. Try to be positive whether it was, or not.

10 A. I am positive enough to say I do not think it was. There
11 would not be but two things about the contract that attracted
12 my attention, and that was the three years and rails and
13 fencing.

14 Q. And you don't know whether that was put in the contract,
15 or not? A. What?

16 Q. The two years additional time? A. Yes, sir, I read
17 the contract over, and I did not see it because we agreed on
18 the three years.

19 Q. And afterwards you agreed on the two years in the event
20 of depression in the lumber market, or a panic?

21 A. Yes, sir.

22 Q. And you stated a few minutes ago you don't remember
23 whether it was put in the contract?

24 A. I read the contract, and did not see anything in it but
25 the three years. I read it over. This was a talk that went
26 on between us as to the time.

1 Q, You heard winter before last that there was a provision
2 in this contract about an additional two years within which to
3 cut the timber?

4 A. I heard winter before last
5 (I was up around Holland) and whilst being around Holland I
6 heard something like the timber being sold to some one else,
7 and that they had five years in which to cut the timber in-
8 stead of three.

9 Q. When was that? A. Winter before last.

10 Q. And it was general talk up there? A. I heard it.

11 Q. Who told you? A. I could not exactly say who
12 told it, but I was in the neighborhood and heard it enough
13 to mention it to Mr. Holland.

14 Q. Did you mention it to Jackson Howell?

15 A. I did not.

16 Q. Did you mention it to any of the other parties who had
17 sold the timber? A. No, sir, but some of them
18 may have mentioned it to me.

19 Q. Who mentioned it to you? A. I think Frank
20 Gordon mentioned it to me.

21 Q. How about Anthony Holland? A. A.T.Holland never
22 said anything about it.

23 Q. How about his wife? A. Lucy Holland never
24 mentioned it to me.

25 Q. But it was common in the neighborhood winter before last?

26 A. I don't know that it was common, but I heard it.

Q. Winter before last? A. Yes, sir.

Q. And that Mr. Gus Holland had sold the timber, and he had five years in which to cut it? A. Yes, sir, and I

went and asked Mr. Holland.

Q. You went and asked him? A. I met him in the road.

Q. Did you go to the record to see? A. No, sir.

Q. Why didn't you go to the record?

A. The reason I didn't go I was not so deeply interested in the matter. My timber was not so much, and if I ran up and down the road I would spend more than the timber amounted to. I only wanted him to have the time he contracted for. I did not want to spend more money than I got out of it.

Q. You did not go to the record at all?

A. No, sir.

Q. Although Mr. Holland referred you to the record?

A. Yes, sir.

Q. You did not try to find out who bought it?

A. No, sir, I did not ask.

Q. You did not try to notify them that there was any contention between you as to the time in which he had to cut it?

A. I told them I remembered distinctly selling to Mr. Holland for three years, and as I had sold the land and told the man that I had excepted the timber, that it seems to me the timber on the land was mine, that I had excepted the timber, and I told him that the time would be out about the ninth or tenth of February.

1 Q. But, as a matter of fact, you did not sell your land until
2 the 12th of December, 1905?

3 A. 1905.

4 Q. And yet the previous winter you had heard this rumor?

5 A. Yes, sir.

6 Q. And at that time you had not sold the land?

7 A. I had not sold it.

8 Q. And you did not inquire about it at all?

9 A. No, sir. My idea was to go to clearing the land after
10 the ninth of February.

11 Q. You did not complain to anybody about it, and, as a matter
12 of fact, you did not care anything about it?

13 A. Yes, sir, I did care because it was mine.

14 Q. Was it your purpose to wait until the three years expired,
15 and then undertake to raise some trouble about it?

16 A. My purpose was to wait until the three years were out,
17 and then commence clearing.

18 Q. And then you thought you would keep quiet, and at the
19 end of the three years you would contend for the whole thing?

20 A. I thought at the end of three years it would be mine.

21 Q. Then you did not say anything about it?

22 A. I wanted the timber. I had sold the timber, and wanted
23 the man to have it on his contract.

24 Q. And you thought if you said anything about it the party
25 who bought it might go there and cut it?

26 A. I heard that somebody was going to bring a mill in there

1 and cut it all at once. I do not want a thing that did not
2 belong to me. I did not want a single dollar that don't
3 come to me honest. I don't think I ever had one, while
4 responsible, that did not come to me honest.

5 Q. You would have held on to it, and at the end of the
6 three years have gone on and claimed the timber?

7 A. I did not sell --

8 Q. Would you have waited quietly until the three years
9 had expired, and then have claimed the whole timber?

10 A. I should have waited on the contract and acted accord-
11 ing to the contract. I had no other way to go.

12 Q. Now, this contract was on record, was it not?

13 A. I signed up the contract with Mr. Holland, and he brought
14 it away, and when I saw him sometime afterwards winter before
15 last, when I heard that the contract had been transferred to
16 the hands of somebody else, and that it was five years in-
17 stead of three, I said "no, I signed it for three years, and
18 I will see Mr. Holland about it, and ask him", and I did meet
19 him in the road and ask him.

20 Q. Then you heard that the contract, as recorded, showed
21 five years?

22 A. He referred me to the re-
23 cord, and afterwards I heard some one had been and seen the
24 record, and it showed five years.

25 Q. You knew that a man who would purchase the timber of Mr.
26 Holland would be governed by the record?

A. I did not know that they would do it.

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J.L.Harris

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1 Q. Would not you be governed by the record if you were
2 going to purchase a piece of property?
3 A. Yes, sir.
4 Q. Would not you suppose anybody else would?
5 A. Yes, sir.
6 Q. Would not you suppose the purchaser of this timber would
7 rely upon the record as to the time in which he had to cut it?
8 A. I should think he had ought to.
9 Q. And notwithstanding you understood that the record showed
10 it, you kept perfectly quiet waiting for the three years to
11 pass? A. I kept quiet on the ground that I was
12 waiting for the three years to pass, as that was the contract.
13 I know that sometimes people changes the records and dates.
14 Q. Then you were perfectly willing to keep quiet, and let
15 the man who purchased lose his money?
16 A. I did keep quiet because I promised in the deed not to
17 do anything to interfere with the timber, and it was my
18 business not to do anything to interfere with it. I would
19 not allow anyone to cut in the timber, and I did not interfere
20 with the timber. It was in my possession, and I did not in-
21 terefere with it.
22 Q. You had heard of the additional time, and kept quiet?
23 A. Yes, sir.
24 Q. You were perfectly willing, by keeping quiet, to let
25 the other fellow lose? A. I do not think there
26 was much for anybody to lose, for him or me, because I did

1 not sell but for \$35.

2 Q. But you were willing for the other fellow to lose?

3 A. Do you think I ought to have notified him? I asked
4 Mr. Holland twelve months before the time concerning it,
5 winter before last.

6 Q. Now, tell me again just exactly what Mr. Joyner said to
7 you at the time you signed that contract?

8 A. All I remember Mr. Joyner did say, when he got th the
9 blank for the time, he inquired what time would be allowed,
10 and he said "what time, one or two years". I think those
11 are the words he said. Mr. Holland spoke up and said after
12 a moment, "three years, that being the custom of writing such
13 contracts, but I am expecting to put the mill there soon, but
14 three years being the custom of writing such contracts."

15 Q. That is all that was said? A. That is all I
16 remember being said. That is all I heard Mr. Joyner say.

17 Q. That is all Mr. Holland said? A. I spoke to Mr.
18 Holland when I took the contract up to read it, and was read-
19 ing about the right of way, and called his attention to the
20 wood and fencing and rails, and slabs, such things necessary
21 for the farm, and he told me I would have the privilege of
22 using such things about the farm, but not to be extravagant
23 in the timber, and I told him I wouldn't.

24 Q. That was all that was said? A. Pretty much
25 all that was said.

26 Q. How close was your lumber to be cut down?

1 A. I have not thought about it so much, but it seems to
2 me in the printed form ten inches on the stump, but I think
3 I and Mr. Holland talked it over the day he went around the
4 vine, and he agreed to cut it to twelve inches.
5 Q. Was the ten or twelve inches printed?
6 A. I think it was ten inches printed, and Mr. Holland and
7 I talked over the matter some days previous when we went
8 around the land.
9 Q. Then you think Mr. Joyner scratched out the ten inches
10 and put in twelve inches? A. I don't think Mr.
11 Joyner scratched out the ten. I don't know. I know I and
12 Mr. Holland agreed on twelve inches when he went around it.
13 Q. What did your contract provide - for ten or twelve
14 inches? A. Twelve inches, as I understand
15 it.
16 Q. Was it written out by Mr. Joyner, or was it printed?
17 A. Ten inches printed in the contract, I think, and twelve
18 inches was the agreement of Mr. Holland and myself.
19 Q. And you think you let the ten inches stay in the con-
20 tract as it was? A. I do not think I saw Mr.
21 Joyner scratch on the ten inches.
22 Q. So, according to your recollection, the ten inches was
23 printed in the paper? A. Yes, sir.
24 Q. And Mr. Joyner did not scratch it at all, but left it
25 as it was? A. Yes, sir.
26 Q. Notwithstanding you and Mr. Holland had agreed on twelve

1 inches?

A. I am not certain about that, because I did not give it so much time. My recollection is that we agreed on twelve inches, but I would not say.

2 Q. Did he put in the contract the number of acres?

3 A. I think 50 acres.

4 Q. Was it written out or in figures?

5 A. I think it was written out. He filled it in.

6 Q. Did he put it down in the figures, or write it out?

7 A. I could not say. I know it stood 50 acres of land, more or less. I told him what the deed called for.

8 Q. And you think he wrote it out?

9 A. He might have put it in figures.

10 Q. What did he pay for the lumber?

11 A. \$35.

12 Q. Did he write it out, or put it in figures?

13 A. I think he wrote it after the general custom, both figures and writing.

14 Q. Figures and writing both? A. Yes, sir, that is the general custom.

15 Q. All the balance of the contract was printed with the exception of the description of the land?

16 A. There might have been something else. I can't say positively about a matter that I have given so little thought. That has not been on my mind so much since.

17 Q. It has been over three years ago?

18 A. Three years last February.

1 Q. And notwithstanding you have not thought of it, and not-
2 withstanding you have not given the matter much attention,
3 you come here to-day and swear positively you saw Mr. Joyner
4 write three years? A. Yes, sir. I could say
5 positively.

6 Q. You don't know what else he wrote in the contract?

7 A. Like he filled out a deed. I gave him the dimensions
8 and the boundary lines of that land. I began at a certain
9 swamp in the branch in the land between Jack Wright and
10 going a Southwestern direction bounded by the land of Titus
11 Walden up to a certain stob, adjoining the land of Dempsey
12 Darden, and in a Northwestern direction bounded by the land
13 of Dempsey Darden to a swamp, and then I gave him the boundary
14 lines in an Eastern direction bounded by Jackson Howell,
15 Frank Gorden and Elisha Hare and a gum in the swamp, and
16 down the swamp to the place of beginning, and he wrote that
17 down.

18 Q. After he had written that, and after he had completed the
19 contract, he handed it to you to read?

20 A. Yes, sir.

21 Q. Did you read it? A. Yes, sir.

22 Q. After he had written it? A. Before I signed it.

23 Q. You read it again? A. I did not read it but
24 once. I was looking on it when I gave him the boundary lines.
25 I gave him the boundary lines, and looked over him as he wrote
26 the boundary lines to the land.

1 Q. What was said in that contract about the payment of
2 interest? A. I heard nothing about the payment

3 of any interest. I did not expect any interest, and none
4 was promised.

5 Q. Then nothing was said about the payment of interest on
6 the purchase price? A. Nothing I remember.

7 Q. And nothing was in the contract about the payment of it?

8 A. Not that I have any knowledge of.

9 Q. You do not mean to say that that contract was changed
10 after you signed it? A. I don't know anything about

11 the contract being changed. I have not seen it since I

12 signed it up. If I could see the original contract I signed
13 I could tell more about it.

14 Q. Please state whether or not a contract I now hand you is
15 the contract which you signed? A. Mr. Joyner wrote

16 another deed for the very same man and the boundaries given
17 just now were in another deed. Of course these are the

18 boundaries we gave him, but the boundaries I gave just now
19 were the boundaries I gave on the last deed. This is in my

20 handwriting.

21 Q. Then that is the deed which you signed, isn't it?

22 A. It is in my handwriting. I know this.

23 Q. And the deed just as it is written is the deed which you
24 executed at that time? A. I never read this over.

25 I read it at that time, but I have not read it now, but I
26 see this is my handwriting.

1 Q. Read it? A. I did not sign it. If I did
2 there has been some amendments to it.

3 Q. In what respect has it been changed?

4 A. "Witness that for and in consideration of the prerises --

5 Q. Just state the changes? A. \$65.

6 Q. That is one change? A. Yes, sir.

7 Q. How much was it to be? A. It was not but \$35.

8 Q. Go ahead? A. I don't see any changes, but
9 I don't remember the 15 inches on the stump.

10 Q. Well, go ahead? A. This part in here.

11 Q. Read it? A. This is the only change

12 I see: "The date of this contract and the two more years,
13 if needed by paying 6 per cent interest on the purchase price"

14 Q. What else? A. The next thing I don't
15 remember "my term of office expires July 1903". There are
16 three things I don't remember seeing: \$65, the three years
17 in which to cut and remove the timber (I remember that), and
18 the date of this contract, and two more years if needed by
19 paying 6 per cent interest on the purchase price. I don't
20 remember that. I did not read that when I read the contract.

21 Q. When was that change made? A. The 9th day of
22 February, 1903.

23 Q. The 9th day of February, 1903? A. Yes, sir.

24 Q. Then the consideration is wrong, the description is
25 wrong, and the provision as to additional time is wrong?

26 A. Yes, sir.

1 Q. And the provision as to the expiration of term of office
2 of Notary is wrong? A. I don't say it is wrong,
3 but I don't remember seeing it there.

4 Q. I don't suppose it was. You don't remember the 15 inches
5 from the ground? A. No, sir; I and Mr. Holland
6 decided on twelve inches. I am not much of a lumber man,
7 and he might have cut it down to eight inches, so far as I
8 am concerned.

9 Q. Then the ten inches is wrong? A. I told you I
10 remembered seeing ten inches in the contract.

11 Q. Written out? A. Printed. It was my im-
12 pression that it was printed. I know I and Mr. Holland
13 agreed on twelve inches.

14 Q. But notwithstanding all these things were wrong, you
15 signed the deed? A. The \$35 check was filled
16 cut there that evening. It would have been in my favor if it
17 was \$65, but that was put there since I signed it. I did not
18 get but the \$35, and it was made out that evening.

19 Q. And notwithstanding it was three years, you say all these
20 things are wrong? A. There is no mistake about
21 the check on the bank.

22 Q. Do you know anything about the conversation between Mr.
23 Holland and Jackson Howell? A. No, sir.

24 Q. Do you know whether the man to whom you sold the timber
25 has accepted the interest and given the additional time?

26 A. I heard that Copeland has received the 6 percent interest.

1 I have not seen him, but I heard it. I know Mr. Holland did
2 not pay me \$65.

RE DIRECT EXAMINATION

By Mr. Withers:

Q. Did I understand you to say that after Mr. Joyner had
filled out the contract, and before you signed it, that you
took the contract and read it over?

A. Yes, sir.

Q. That at that time the time granted for cutting the timber
was three years and no more? A. Three years and no
more.

Q. At the time you asked Mr. A.A.Holland about the rumor,
you had heard that he had sold the timber, and that the pur-
chaser had five years, instead of three, in which to cut it,
what did he tell you? A. Mr. Holland told me

that he did not remember, that I could go to the record at
Suffolk, and I would find just how it was.

Q. At that time did you try to recall to his memory that
you sold only for three years? A. No, sir. I

and Mr. Holland met on the road, and he passed one way and I
the other, and there were only a few words exchanged.

Q. Did you tell him you thought it was only three years?

A. I told him I knew it was only three years. I met Mr.
Holland and said to Mr. Holland, "Mr. Holland, was it not
three years that I sold you that lumber for". Mr. Holland

1 says "Harris, I don't know; you go to the record, and you will
2 find it".

3 Q. Did he deny that it was three years?

4 A. He did not. He told me to go to the record. I said
5 "Mr. Holland, it was three years I sold you the lumber for",
6 and he said "Harris, I don't remember, go to the record".

7 Q. You stated it was three years, and he told you he didn't
8 remember, but go to the record? A. Yes, sir. I

9 said "Mr. Holland, it was three years I sold the lumber for",
10 and he said "I don't remember, go to the record".

11 By Mr. Holland:

12 Q. Then you were not certain about the time when you asked
13 him about it? A. I was certain, but I

14 wanted to know what he was going to say about it.

-----oOo-----

18 D.H.MILTEER, being duly sworn, testified as follows:

19 Examined by Mr. Withers:

20 Q. Please state your name, age, residence and occupation,
21 and if you know the parties to this suit?

22 A. D.H.Milteer; age forty-five; residence Holland;
23 occupation farmer; I know the parties to this suit.

24 Q. Do you own land in the neighborhood of A.J.Howell?

25 A. Yes, sir.

26 Q. Did you sell the timber from that land to A.A.Holland

about February, 1903?

A. Yes, sir.

Q. Was this a part of the line of timber purchased by him about that time?

A. Yes, sir.

BY MR. BURGESS: Counsel for the defendant objects to this question and all similar questions and any answer or answers that may be given thereto for the reason that the sale made by the witness is not in controversy in this suit, and any testimony in regard thereto would be immaterial and irrelevant.

By Mr. Withers:

Q. Please state what was your bargain with Mr. A.A. Holland before he brought the written contract for you to sign?

A. It was in January, 1903, Mr. Holland come to my house one day, and I had been killing hogs. He said he wanted to buy my timber, and I told him well, if we could bargain. He said "well", and never said anything more, only he said he would come in a few days and look over it. It was several days may be a week, or five or six days, and he and I looked over the timber, and there was no bargain and no price, and he merely walked over it, and looked over it, and he walked over it and left. One evening I was at the barn in the field, and he said he wanted to make a bargain for the timber, and I asked what he would give, and he told me. I said he would have to give more than that. He said \$150 at first. I asked how much time he wanted, and he said three years. He stayed around there a while, and after awhile he agreed to give me

1 \$225. He went away, and did not say any more. The bargain
2 was not closed then. He offered me \$225. That was the first
3 agreement we ever agreed upon as the price. He went off, and
4 in a week again he and Mr. Joyner came when I was up in the
5 field at work, and he come and says "I have this contract, and
6 am ready to sign up, and here is your money," and I said " I
7 can't let you have that timber, it runs more down to ten
8 inches, I can't let you have it down to ten inches, it will
9 cut so small and it will grow so much in the time of three
10 years, I can't do it, but if you will take it down to twelve
11 inches you can take it for \$225". We walked over the timber
12 and took another look, and he and Mr. Joyner come to the house,
13 and we went and took a second look at the timber.

14 Q. What Joyner was it? A. Elihu Joyner. He
15 agreed to give me in consideration of the stumpage between
16 ten and twelve inches all the stable manure. He said he
17 would put a mill at Frank Gordon's - "right in front of your
18 timber, and I will take every bit of the timber you have in
19 18 months, but, anyway, we will make it three years," and he
20 agreed to give me the stable manure, and he agreed to give
21 the merchantable boards before I would agree to it.

22 Q. Then the contract read ten inches instead of twelve
23 inches? A. Yes, sir.

24 Q. I handd you contract dated 7th of February, 1903: is that
25 the contract referred to by you? A. About the manure,
26 he said "I will put twelve head of rules in the woods to work,

1 and the stable manure will be worth \$100 besides the merchant-
2 able boards.

3 Q. This he agreed to give you, the stable manure and three
4 thousand feet of merchantable timber, and you were to give
5 him the timber on your place down to ten inches?

6 A. Yes, sir.

7 Q. And he was to have how long to cut it?

8 A. Three years.

9 Q. What is the last part of that contract?

10 A. I have never been able to read it. Maybe Mr. Holland
11 can read it, as he wrote it.

12 Q. It is something about keeping the stable straw, I think.

13 BY MR. BURGESS: The question and answer are objected
14 to on the ground that it is a previous contract,
15 and different from the contract of record.

16 By Mr. Withers:

17 Q. Then you understood that Mr. Holland was to erect a
18 saw mill at Frank Gordon's gate? A. Yes, sir, and
19 give me the stable manure while the mill was there. He was
20 to put a mill there and give me the manure.

21 Q. The contract last referred to states you are to have the
22 manure for one or two years? A. Yes, sir.

23 Q. Was it your understanding that that would be as long as
24 the saw mill was expected to stay there?

25 A. That was my understanding. He said he would put the
26 mill there, and that he would cut my timber the first lot. I

1 spoke of the timber being there, and would grow more in the
2 three years, and he said it would not be there three years,
3 that he would put the mill there in less than eighteen months,
4 and would cut mine first.

5 Q. Were you anxious to have a mill there in the neighbor-
6 hood? A. Yes, sir.

7 Q. Was that an inducement for your entering into this con-
8 tract? A. Yes, sir.

9 Q. You relied upon his statement that there would be a
10 mill there? A. Yes, sir.

11 Q. When you signed the contract was there anything in there
12 to your knowledge about an extension of two years?

13 A. When we were coming out he said "there is a presidential
14 election coming on, and there may be a money panic, which you
15 know sometimes there is; if it should come a presidential
16 election and the lumber should drop so low it would not do
17 to cut it and sell it, would not you give me more time",
18 and I said "I will consider it; if anything should happen we
19 will consider that".

20 Q. You told him you would consider it if it happened, and
21 after it happened? A. Yes, sir.

22 Q. You did not agree to have those words two years additional
23 time put in the contract? A. No.

24 Q. When you signed the contract did you know there was
25 such in the contract? A. No, sir.

26 Q. How was it you signed the contract not knowing those words

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1 were in there? A. Mr. Joyner came to the
2 house and drew the contract up. Mr. Holland was on that
3 side, and Mr. Joyner to the right. I was not noticing, and he
4 must have written it in the house. We were sitting off talking,
5 and Mr. Joyner handed it to me, and Mr. Holland said "Hold on,
6 Mr. Milteer, here is a clause in here I will not use; it is
7 for a railroad and cross ties which shall not be put there,
8 and you will never be bothered by a railroad running through
9 the land, I am going to have a mill where I told you, and I
10 will give you a written statement showing that I will put a
11 mill at Frank Gordon's gate."

12 Q. After he said that what happened next?

13 A. He explained the balance of the contract, and he said
14 "That is just as our bargain", and I never read it, and had
15 confidence in him that it was just as the bargain, and I
16 signed it and handed it back.

17 Q. When he was telling you the contents of the contract, what
18 did he say about the time?

19 A. He said the balance was just as we bargained.

20 Q. And your bargain was for three years?

21 A. For three years.

22 Q. Please state what you heard Mr. A.A. Holland say with
23 regard to the time that he had to cut the timber on the land
24 of J.K. Holland? A. He said to me "I want

25 three years, and that is all I do want; that everybddy has
26 given me three years except J.K. Holland, and he only gave me

1 two, and I am going back and try to pull another year".

2 Q. He said that everybody else had given him three years
3 except J.K.Holland, and he only gave him two, but that he,
4 A.A.Holland, was going back to try to pull another year?

5 A. Yes, sir.

6 Q. Has your timber increased in value since that time?

7 A. Yes, sir. It was young, and it has grown.

8 Q. What did you get for that timber?

9 A. \$225.

10 Q. What is it estimated to be worth now?

11 A. \$1425.

12 Q. Is that estimate made by a man who knows anything about
13 timber?

A. Yes, sir, Mr. Joseph Holland.

14 Q. What experience has Mr. Joseph F. Holland?

15 A. He has been estimating timber around for people.

16 Q. For how long? A. I don't know really how
17 long, but lots of them hire him about, or some do hire him and
18 take his estimation?

19 Q. That is his business? A. No, sir, he is a
20 farmer, but at odd chances he will do such work as that for
21 you.

22 Q. How many feet did Mr. Holland estimate?

23 A. I just looked at it, but I don't remember.

24 NOTE: The written estimate is handed the witness.

25 Witness: 475,000 at \$3 a thousand.

26 Q. When did you first hear that the parties who owned this

1 timber claimed that they had a right to cut for two additional
2 years by paying interest?

3 A. When I come down to the Clerk's Office and looked over it
4 some time last fall.

5 Q. Had you ever heard anything from anybody about your right
6 to demand interest on the purchase price?

7 A. Yes, sir, some had told me.

8 Q. When did you hear that?

9 A. The first I asked about it I went to Mr. Holland, and
10 asked what he was going to do about the manure, and he said
11 he had not put any mill in there, and he did not consider that
12 he owed any manure. He promised that he was to furnish the
13 boards. He asked if they had paid the interest, and I said
14 no and asked if it would affect the sale, and he said if it
15 had been him he would have paid it.

16 Q. When was it? A. This spring.

17 Q. After the 6th of February, 1906?

18 A. I don't remember the date, but some time this spring.

19 Q. Was it after the three years were out?

20 A. Yes, sir, I recollect it was after the three years were
21 out.

22 Q. When you inquired of Mr. Holland it was after you had
23 seen the recorded contract in the Clerk's Office?

24 A. Yes, sir.

25 Q. My question to you is this, at the time you were bar-
26 gaining and selling the timber to Mr. Holland, did he, at that

1 time, or before that time, say anything about paying interest
2 on the purchase price? A. No, sir.

3 Q. You never heard of that until you saw it in the Clerk's
4 Office? A. No, sir.

6 CROSS EXAMINATION

7 By Mr. Burgess:

8 Q. Now, Mr. Milteer, if I understand you correctly, some
9 time in January, 1903, you and Mr. Holland negotiated about
10 the sale of this timber, and walked over it three times and
11 discussed the matter before coming to any agreement, and
12 finally he came up and offered you \$150?

13 A. Yes, sir.

14 Q. And afterwards you got together on \$225?

15 A. Yes, sir.

16 Q. And your agreement then was that he should have it down
17 to ten inches, and should have three years in which to cut it,
18 and it should be all pine timber, and the agreement as to the
19 boundary? A. Yes, sir.

20 Q. That closed the transaction?

21 A. That was all that was talked about then.

22 Q. When he came back, as I understand it, you told him you
23 would not carry out that contract? A. Yes, sir, that
24 I could not do that, and we laid that aside.

25 Q. Had not you made a contract with him?

26 A. We had talked it over, but we had not signed any contract.

1 Q. But you had agreed orally on the contract?

2 A. We had spoken of it.

3 Q. But, as a matter of fact, had not you agreed as you stated
4 before according to the terms I have stated?

5 A. He asked me about that, and I told him I would not do it,
6 and after we laid that aside he agreed to give me the stable
7 manure and the merchantable boards. He said he would take
8 a look at that. I told him the timber would run so low then
9 he agreed to give me more.

10 Q. Is not it a fact that you made an oral agreement, which
11 you afterwards told him you would not carry out?

12 A. We spoke of it. We talked over it, and that was our
13 understanding then, but after then we come on another bargain.

14 Q. Then you made two bargains, if I understand it?

15 A. Yes, sir.

16 Q. One of which you refused to carry out?

17 A. That is right.

18 Q. Then he made a second bargain in which he agreed to give
19 you the stable manure and so many feet of lumber?

20 A. Yes, sir, three thousand feet of merchantable boards.

21 Q. Have you ever settled with him in regard to the stable
22 manure and the merchantable boards?

23 A. No, sir.

24 Q. Had he declined to furnish you those boards?

25 A. No, sir.

26 Q. Have you demanded them of him?

A. Yes, sir.

1 Q. What did he say? A. He said he would furnish
2 them.

3 Q. So, so far as you know, when demanded you will receive
4 those boards? A. Yes, sir, I suppose so.

5 Q. After you had discussed the other terms, as I understand
6 it, Mr. Holland said "now, in the event that the presidential
7 election year should cause a money panic I would like to
8 have, or I might want two years more," and you replied "I
9 will consider that when it happens"?

10 A. Yes, sir.

11 Q. Was that all that was said at that time about the money
12 panic? A. Yes, sir.

13 Q. And that was your understanding?

14 A. That was my understanding.

15 Q. Can you recall any other words that were used? I would
16 like, if possible, for you to repeat the exact conversation
17 that took place between you and Mr. Holland?

18 A. That is all I recollect.

19 Q. Repeat it again about the money panic?

20 A. He said "you remember now that this year is the presi-
21 dential election, and as a general thing there comes a money
22 panic presidential elections, and if lumber should go down
23 so it will not pay to market this timber, or if the price
24 should fall to nothing, you would give me more time, wouldn't
25 you", and I said "I will consider it if such a thing should
26 happen".

- 1 Q. Nothing was said about the price of the extension?
- 2 A. No, sir.
- 3 Q. Then you went back and Mr. Joyner drew the contract?
- 4 A. Yes, sir.
- 5 Q. Of course, Mr. Milteer, you have no trouble in reading
- 6 printing or writing? A. No, sir, I can read some.
- 7 Q. As a matter of fact, can you read as well as anybody can?
- 8 A. Yes, I can read.
- 9 Q. You could have read this contract if you had tried?
- 10 A. Yes, sir.
- 11 Q. You are familiar with Mr. Joyner's handwriting, are you?
- 12 A. No, sir. I did start to read that contract, as I told
- 13 you a while ago, but Mr. Holland took hold of it just like
- 14 that (indicating), and explained it, and explained the rail-
- 15 road. He said "I pledge myself that there shall be no rail-
- 16 road in here", and explained the balance of it, and through
- 17 confidence I had in Mr. Holland, and that the contract was
- 18 as I bargained, I let it go along.
- 19 Q. Then Mr. Holland explained it to you, and when he got to
- 20 the time, what were the words he used?
- 21 A. He did not say, but "just as we bargained."
- 22 Q. He said the time was "just as we bargained?"
- 23 A. Yes, sir.
- 24 Q. You did not consider him to mean when he said that to
- 25 have three years and longer if needed?
- 26 A. No, sir.

1 Q. Do you know that he did not consider it at the time as
2 your bargain? A. I don't know what he con-

3 sidered.
4 Q. You are not prepared to say that he did not mean that,
5 are you? A. How is that?

6 Q. You are not prepared to say that Mr. Holland did not have
7 that in mind when he said "just as we bargained"?

8 A. I could not say.

9 Q. And when you took the contract to sign it, you did not
10 know what he had in mind?

11 A. I just took it and signed it.

12 Q. You did not glance over it after that?

13 A. I started to, and if you will let me I will show you how
14 far. He read down to there "The said parties of the first
15 part grant a right of way". When he commenced to read that
16 he commenced to explain that, and he said "you will never be
17 bothered about that, it is a mere form of contract that I
18 had. There will be no railroad there, and you need give your-
19 self no uneasiness about it; I will put the saw mill where
20 I told you, and I will give you the statement there to show
21 that I will put it there".

22 Q. In the next to the last paragraph in this deed there is
23 written with a pen these words: "Date of this contract and
24 two more years if needed by paying 6 per cent interest on
25 purchase price". Are you prepared to say at the time you
26 signed that contract those words were not written there?

- 1 A. I was going by the words he explained to me.
- 2 Q. Did you look to see whether they were there, or not?
- 3 A. No, sir, I took his word for it.
- 4 Q. Then, of course, you could not say it was not written
- 5 there? A. I took his word for it.
- 6 Q. Did you hear Mr. Holland when he gave instructions to
- 7 Mr. Joyner as to how the deed was to be written?
- 8 A. No, sir.
- 9 Q. Where were you then? A. Sitting in the room,
- 10 but there was not a word spoken about the agreement.
- 11 Q. How did Mr. Joyner know how to write the agreement?
- 12 A. I don't know.
- 13 Q. Somebody must have given him the boundaries; who did
- 14 that? A. I don't recollect. I suppose
- 15 he must have taken them himself.
- 16 Q. Who gave the number of acres? A. I.
- 17 Q. Who told him the price? A. The price of the
- 18 timber?
- 19 Q. Yes? A. It was not spoken of when I
- 20 was in there.
- 21 Q. He has written here 225. Did he write that correctly?
- 22 A. That is correct.
- 23 Q. Then Mr. Holland paid you the \$225?
- 24 A. Yes, sir.
- 25 Q. And you turned over the deed to him?
- 26 A. Yes, sir.

- 1 Q. When was your attention next called to this contract?
- 2 A. I think it was some time during the year.
- 3 Q. That year? A. Yes, sir.
- 4 Q. What did you hear then? A. I heard that he had
- 5 three years with an extension of two more by paying 6 per
- 6 cent interest.
- 7 Q. That was the year 1903? A. Yes, sir, during
- 8 some time of last year.
- 9 Q. What did you hear during the first year of the contract?
- 10 A. I did not hear anything.
- 11 Q. Did you hear anything the second year?
- 12 A. I don't think I did.
- 13 Q. Did you go to Mr. Holland about locating the mill there?
- 14 A. I asked him when he was going to put it there, and he
- 15 said pretty soon.
- 16 Q. When was that? A. The first year after
- 17 the spring opened.
- 18 Q. Then it was not until the third year that you heard that
- 19 he had two years? A. Yes, sir.
- 20 Q. What time of year was it? A. I think along
- 21 in the fall.
- 22 Q. Who first called your attention to it?
- 23 A. I don't recollect now, but I heard them speaking about
- 24 it.
- 25 Q. Do you mean it was sort of current gossip there?
- 26 A. Yes, sir.

1 Q. Then you came to the Clerk's Office?
2 A. Yes, sir.
3 Q. Do you remember what time you came to the Clerk's
4 Office? A. Some time during the fall.
5 Q. Do you know who showed you the deed?
6 A. Yes, sir.
7 Q. And he read this clause? A. Yes, sir.
8 Q. What did you do? A. I saw it there, and
9 did not know what to do.
10 Q. How long was it before you saw Mr. Holland?
11 A. Mr. Gus Holland?
12 Q. Yes? A. I don't recollect. I hardly
13 ever see him.
14 Q. Did you ever speak to him about this misunderstanding
15 about the deed? A. No, sir, I never said a
16 word to him. I was it was there, and I heard it had been
17 sold.
18 Q. Who did you hear it had been sold to?
19 A. I heard after a while it had been sold to Crocker &
20 Brother, and then again I heard it had been changed to Mr.
21 Cramer.
22 Q. Did you go to either one of the Crockers or Mr. Cramer?
23 A. No, sir.
24 Q. You said just now that some time this spring you had a
25 conversation with Mr. Gus Holland, and he asked you if they
26 had paid the interest? A. Yes, sir.

1 Q. And you said no, and asked if that would affect it, and
2 he said if it had been in his place he would have paid it?

3 A. Yes, sir, but I had found then it was on record and it
4 had changed hands.

5 Q. Did you say anything to Mr. Holland then?

6 A. No, sir.

7 Q. You did not call attention to the fact that it was not
8 your understanding? A. No, sir, because it was
9 out of his hands, and I did not know what to think about it,
10 and I never said nothing.

11 Q. What did you consider your timber worth the day you sold
12 it to Mr. Holland? A. I don't know. I don't
13 know anything about timber.

14 Q. Did you have it estimated at that time?

15 A. No, sir.

16 Q. Why did you have it estimated recently?

17 A. To see what there was in there.

18 Q. The value which was placed on it by Mr. Joseph Holland,
19 who estimated it, was its present value at the time he
20 looked over it, was it not? A. Yes, sir.

21 Q. When was it? A. I don't recollect. In
22 July, as near as I recollect, but I will see. (Examining es-
23 timate heretofore referred to). August 4th.

24 Q. If you had notified Mr. Cramer, when you first knew
25 of the difference in the deed, that you claimed that he only
26 had three years, and that you would require him to remove the

1 timber in three years, could he not have cut your timber and
2 hauled it off before the time expired?

3 A. I don't know. I did not know Mr. Cramer, and I thought
4 he would look after his own interests, and I did not think
5 it any business of mine.

6 Q. Now, Mr. Milteer, as a matter of fact, were not you
7 rather anxious that Mr. Cramer should not get that timber off
8 in three years?

9 A. If he had let it stand
10 still, and let the time run out, I should have cut the timber.

11 Q. If he had cut this timber last fall, and winter, he
12 would have had the right to cut off the \$1425 worth?

13 A. Yes, sir.

14 Q. And the only real complaint you have is the additional
15 time which he will take to cut it? That is the only additional
16 damage that will accrue to you will be the time?

17 A. And the difference in the timber.

18 Q. Is he at work on that timber now?

19 A. I don't think he is. He is putting a track in there, I
20 am told, and I do not think he has commenced to work on the
21 timber yet.

22 Q. Then, if he cuts it within a year the only advantage Mr.
23 Cramer will have will be the amount that timber will grow
24 in a year, with the use of the land, isn't it?

25 A. I would not know how that would be.

26 Q. And while you think it was possible in your power to
notify Mr. Cramer and save yourself from any damage from this

1 misunderstanding, you did not do it?
2 A. No, sir, I did not do it.
3 By Col. Holland:
4 Q. About the first of March did you receive a letter from
5 me, as attorney for the Cramer Company, asking for an additional
6 three years in which to cut timber? A. Yes, sir.
7 Q. And claiming two years extension from February, 1906?
8 A. Yes, sir.
9 Q. Did you reply to that letter? A. No, sir.
10 Q. Did you send me a message that you would let me hear from
11 you? A. I don't recollect.
12 Q. My recollection is that you called me up over the phone,
13 and told me you would be down in a day or two, and let me
14 hear from you? A. Maybe I did.
15 Q. Were you afterward tendered the interest for the two years?
16 A. The first thing said about it was when you and Mr. Gay
17 passed around, and wanted to buy an extension, and then you
18 did not say much to me anyway, and I said I would let you
19 hear from me.
20 Q. I told you I was ready to pay the interest at any time?
21 A. Mr. Gay did.
22 Q. And did not Mr. Gay afterwards come to you and offer
23 you the interest? A. Yes, sir.
24 Q. As a matter of fact, we told you then we were ready to
25 pay it? A. Yes, sir.
26 Q. And you declined to accept it, and we offered it to you

1 later?

A. Yes, sir; because I considered the timber mine under the expression after the 6th of February.

Q. Did you say anything at that time about the matter except you had this contract with Mr. Holland? A. Not that I recollect of.

Q. So far as you recollect, you raised no objection to the additional extension of two years?

A. I did not say anything only I told him about that. I did not know how it was, and I did not say anything about it.

Q. As a matter of fact, you did not say at that time you claimed the timber, and that Mr. Cramer had no rights in it?

A. I did not say either way.

Q. You knew from some time early in March that Mr. Cramer claimed the two years extension, did you not?

A. Yes, sir, I knew through you.

Q. And you knew the timber had not been out?

A. Yes, sir.

Q. And you also knew that people when they paid for timber were mighty apt to cut it? A. It is generally the case.

Q. And you also knew, did you not, before the time expired some time last fall that they would claim an additional two years in which to cut it? A. I saw it on the record.

Q. And seeing it on the record you naturally supposed that they would claim the additional two years in which to cut the

1 timber?

A. I supposed so.

2 NOTE: The contract referred to in this deposition
3 dated February 7th, 1903, is filed marked exhibit
4 D.

RE DIRECT EXAMINATION

7 By Mr. Withers:

8 Q. You said, that Mr. Holland, when he took the contract
9 from your hand, told you that the terms were just as you had
10 bargained?

A. Yes, sir.

11 Q. Did you bargain with Mr. Holland to allow him three years
12 in which to cut and remove the timber, commencing from the
13 date of this contract, and two years more if needed by paying
14 6 per cent interest on the purchase price?

15 A. That was not our bargain; nothing but the three years.

16 Q. Did Mr. Holland say anything to you about paying you 6
17 per cent on the purchase price at that time?

18 A. No.

19 Q. And the only thing that he said about any additional
20 time was based on a contingency of a money panic due to a
21 presidential election, and you replied you would let him
22 know when that came?

A. That is right.

23 Q. Are you ready and willing to return to Mr. Holland, or
24 to Mr. Cramer, the purchase price received by you for this
25 timber?

A. Yes, sir. If they give me the

26 timber?

Q Yes?

A. Yes, sir, I am willing to do what is fair and right at any time.

-----oOo-----

R.E.BABB, being duly sworn, testified as follows:

Examined by Mr. Withers:

Q. Please state all you know about this matter?

A. After Mr. A.A.Holland bought this lumber from these parties one day he was speaking and said he expected to put a saw mill in there, and I said I hoped he would on account of my getting strips because it would save me from cutting stove wood. *This evidence includes that he made a bargain on the old Lee road to sell this lumber for \$75.00 that a bill for \$75.00 was paid to him and he gave an order for \$75.00 but that no bill was presented to him or signed. He has since that time been*
JAMES O. EVERETT, (Colored) being duly sworn, testified as follows:

fied as follows:

Examined by Mr. Withers:

Q. Do you live in this same neighborhood?

A. Yes, sir.

Q. Did you undertake to sell any of your timber to Mr. A.A. Holland in the early part of 1903?

A. Yes, sir.

BY MR. BURGESS: Counsel for the defendant renews objection made to similar testimony of other witnesses.

James O. Everett

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By Mr. Withers:

Q. You owned the land on which the timber grew?

A. Yes, sir.

Q. How did you bargain with Mr. Holland?

A. For three years.

Q. To cut the timber in three years?

A. Yes, sir.

Q. You are positive about that?

that is what he said.

A. Yes, sir,

Q. How close down was he to cut the timber?

A. Down to ten inches.

Q. Fifteen inches from the ground?

A. Nothing was said about that, but ten inches in size.

Q. He had three years in which to cut it?

A. Yes, sir.

Q. From the date of the contract?

from the date of the time he bought it.

A. Yes, sir,

Q. Did you ever bargain with Mr. J.D.Crocker for this timber?

A. I don't know anything about Mr. Crocker. I bargained with Mr. A.A.Holland.

Q. Do you know Crocker & Brother?

never saw them to know them.

A. No, sir, I

BY MR. BURGESS: The testimony of this witness is objected to on the ground that this is in regard to a contract between him and J.D.Crocker & Brother, to which Mr.Holland is neither party nor

1 privy, and for the further reason that J.D. Crocker
2 & Brother are not parties to this suit.

3 By Mr. Withers:

4 Q. Who paid you the money for your timber?

5 A. I did not receive any money. Doctor Holland had a
6 deed of trust on the property, and Mr. A.A. Holland paid
7 him over the money, I guess.

8 Q. Was that your bargain with Mr. Gus Holland?

9 A. Yes, sir, I told him that there was a deed of trust on
10 it, and to pay me the balance.

11 Q. Did he pay you the balance? A. Yes, sir, he
12 gave me a note.

13 Q. A note or check? A. It answered in the
14 place of a check. It was a note to his store. It answered
15 in the place of a check.

16 Q. At the time he gave you this money, did he have a con-
17 tract for you to sign? A. I have never signed
18 a contract. I have never signed it.

19 Q. I here hand you a contract purporting to be for the sale
20 of this timber on 30 acres of land for \$85 which conveys the
21 timber to Crocker & Brother. I ask you if this is your
22 signature?

23 A. No, sir, I have not seen
24 none. There was not any brought to me for me to sign. I
25 have not signed any contract at all.

26 Q. Did you sign a contract for that timber for anybody at
any time? A. I have not signed anything for

1 they have not been there for me to sign. They have not been
2 there, and have not had any contract for me to sign.

3 Q. Did you sign a contract or paper for Doctor Job Holland?

4 A. No, sir, no more than a deed of trust. Mr. Joyner had
5 the deed of trust, and Dr. Holland lifted it, and that was the
6 only signing I did.

7 Q. That was sometime before you sold the timber?

8 A. Yes, sir.

9 Q. How long? A. A year and a half or two
10 years I don't remember how long. It was over a year.

11 Q. You are positive you never signed any contract or deed
12 for the sale of this timber for anybody?

13 A. No, sir, there was never any brought to me to sign. If
14 there was it was while I was asleep, and not while I was
15 awake.

16 Q. You say you bargained to sell the timber to Mr. Holland?

17 A. Yes, sir, Mr. A. A. Holland.

18 Q. And he was to have three years in which to cut it?

19 A. Yes, sir.

20 Q. How much was he to pay for it? A. \$85.

21 Q. And he was to pay of that \$85 enough to lift the deed of
22 trust to Dr. Holland and pay you the balance.

23 A. Yes, sir.

24 Q. How much were you to receive? A. The deed of trust
25 was \$78.

26 Q. And you received \$7? A. Yes, sir.

1 Q. Did you ever agree with Mr. Holland that he could have
2 three years in which to cut and remove the timber from the
3 date of the contract, and two years more by paying 6 per cent
4 interest on the purchase price?
5

6 A. He never said anything to me about it except the three
7 years. He never said anything to me about it, and I have not
8 said anything to him.

9 Q. Did he at any time say anything to you about an additional
10 time of two years?

11 A. He has not said anything
12 to me about it, and I have not said anything to him since he
13 paid the remainder.

14 Q. Did he say anything to you about, or before, or since,
15 the time you sold it, about an additional term of two years?

16 A. No, sir.

17 Q. Have you ever heard you were entitled to 6 per cent interest
18 on the purchase price of this timber?

19 A. I received a letter from Mr. E.E.Holland in March, I
20 think it was, concerning the giving 6 per cent interest for
21 the two years.

22 Q. Is that the first you ever heard about these two addition-
23 al years?

24 A. Yes, sir.

25 Q. That is positively the first you ever heard about it?

26 A. Yes, sir. I was at Holland helping Mr. A.T.Holland
load a car of peas, and carried the letter and asked him
concerning it, as I had sold the land, and he told me to
turn it over to the man I sold the land to.

1 Q. And you did not answer it? A. No, sir.

2 Q. Who did you sell to? A. Elisha Hare.

3
4 CROSS EXAMINATION

5 By Mr. Burgess:

6 Q. Everett, you are not much on signing, are you?

7 A. I don't know what you mean.

8 Q. You do not like to sign papers?

9 A. I don't like to sign unless I know what I am signing.

10 Q. You never signed any papers giving them this right?

11 A. They have not been to me with any to sign.

12 Q. Has not anybody been to you to sign such a paper?

13 A. No, sir.

14 Q. You never signed any paper of any kind about this timber?

15 A. No, sir.

16 Q. Nobody has paid you any money in extension of time?

17 A. Certainly not, no, sir.

18 Q. And, therefore, there has not been any paper presented
19 to you, and nobody asked you to sign any paper, and you
20 never signed any paper giving any rights to this timber in
21 controversy? A. No, sir.

22 Q. You can write, can't you? A. I can scratch a
23 little.

24 Q. You went to school, didn't you? A. Yes, sir, a
25 little.

26 Q. How long did you go to school? A. I can't hardly

1 tell how long I went.

2 Q. Will you take this piece of paper and this pencil and
3 write your name down there?

4 NOTE: Witness writes his name on paper marked
5 exhibit E.

6 Q. Now, write it down there with a pen?

7 NOTE: The witness writes his name on exhibit E
8 with pen.

9 Q. Now, as I understand you, that is the first time you
10 ever wrote your name anything about this timber?

11 A. Yes, sir.

12 Q. Here is a paper that has your name written on it; did
13 you write that? A. No, sir.

14 NOTE: The paper referred to is marked for identi-
15 fication exhibit F, and it is agreed between
16 counsel that Col. Holland is to keep possession
17 of it until trial.

18 Q. Who paid you over this balance after paying Dr. Holland?

19 A. Mr. A.A.Holland.

20 Q. Where were you? A. Over at his store.

21 Q. When did you see Dr. Holland about this matter?

22 A. I don't know, sir. I saw him, but it was not so long.

23 Q. Did he tell you he had been paid?

24 A. Yes, sir, I got my deed of gift from him to release the
25 deed of trust, and it cost me a dollar.

26 Q. What sort of deed of gift did he give you?

1 A. A release deed, I think.

2 Q. Did you take it down to the Clerk's Office?

3 A. He brought it from the Clerk's Office himself. He gave
4 it to me by paying him a dollar.

5 Q. He told you the deed of trust was released?

6 A. That the land was clear.

7 Q. Mr. Holland never brought any paper to you to sign at
8 all?

A. No, sir.

9 Q. He gave you a paper which was an order on the store?

10 A Yes, sir.

11 Q. Did you ever have a talk with Mr. Elihu Hoyner about
12 this timber deed?

13 A. No, sir, I have not
seen the paper.

14 Q. I now show you a paper purporting to be a deed from you
15 to J.D.Crocker & Brother (marked exhibit G). I believe you
16 have said that that is not your handwriting?

17 A. Nobody brought anything to me to sign.

18 Q. Look at that signature, and tell me if it compares at
19 all with the usual manner in which you write your name?

20 A. No, sir, I have not read it.

21 Q. That is not the question. Does it look like your hand-
22 writing?

A. No, sir. I have not signed it.
23 If I signed it I would say so. I have not seen it.

24 Q. I now put you on your guard, as I expect to impeach you.
25 Did you not, on or about the 21st of March, 1906, in the office
26 of E. Joyner, at Holland, sign your name to that paper, and

1 acknowledge it to be your deed for that timber, in the
2 presence of Mr. Joyner? A. No, sir, I did not
3 do it. There has not been any paper brought to me to sign
4 concerning the timber.
5 Q. You say nothing was said to you about a two years exten-
6 sion? A. No, sir. The first time I knew
7 anything about it was when I received the letter from Mr. E.E.
8 Holland, and that was in March, I think.
9 Q. Had you sold your land then? A. Yes, sir.
10 Q. When did you sell your land? A. Year before
11 last just before Christmas, in December, I think.
12 Q. Then, so far as you are concerned, you are not hurt
13 whether they wait two years or ten years?
14 A. I sold the timber before the land. I did not sell the
15 timber to the man I sold the land to. I sold the timber to
16 Mr. Holland and sold the land to Elisha Hare.
17 Q. Did not he tell you about having sold the timber?
18 A. He knew about my having sold the timber.
19 Q. Did he look up the record in the Clerk's Office?
20 A. I don't know whether he did, or not.
21 Q. When you sold to him nothing was said about this timber
22 sale at all, was there? A. I did not mention
23 the timber at the time, because he knew I sold it. We sold
24 the timber in one day; both of us sold to Mr. Holland at the
25 same time. I simply sold him the land, and the timber was
26 already sold.

- 1 Q. Do you know where you were on the 21st day of March,
2 1903? A. I was on the railroad, I guess.
- 3 Q. That was the day the deed was supposed to have been made?
4 A. It might have been made out that day.
- 5 Q. What day was it you made your oral contract or verbal
6 contract - that is by word of mouth - with Mr. Holland?
7 A. Some where between the 10th and 20th of March, because
8 I was working on the railroad at that time, and the pay days
9 were generally the 20th.
- 10 Q. Where were you when you made this contract?
11 A. We had not made a contract. Do you mean where we were
12 when we made the bargain?
- 13 Q. When you made the bargain? A. In the road - at
14 the old Lee Road. We had been to look at the timber, and
15 was going to Mr. Elisha Holland for his horse.
- 16 Q. And you stopped there in the road and had this talk?
17 A. We did not stop, but walked along.
- 18 Q. What did he say to you? A. He did not say
19 anything to me, only what he would give me, and three years
20 was all he wanted.
- 21 Q. Did he name the price?
22 A. He told me going along what he would give. I asked
23 him and said "Mr. Holland, what are you going to give me", and
24 he said "\$85".
- 25 Q. What did you say? A. I didn't say any
26 thing.

1 Q. That ended the bargain, did it?

2 A. Yes, sir.

3 Q. Then, where did you go? A. Went on with him
4 home.

5 Q. Did you go in the store? A. Yes, sir,
6 went in the lot and helped him unhitch his horse, and went
7 in the store, and stayed an hour or two.

8 Q. He gave you a paper then? A. No, sir.

9 Q. Did he ever give you a paper? A. No, sir, ex-
10 cept the paper for the money, after paying Dr. Holland.

11 Q. Did you go together to see Dr. Holland?

12 A. No, sir.

13 Q. How did he know about your owing Dr. Holland?

14 A. I told him.

15 Q. And he reserved that much money, and gave you the order?

16 A. Yes, sir.

17 Q. Where did you go after you got that?

18 A. That was several days after that. I was working on the
19 section on the Southern road.

20 Q. Where were you when you got the remainder?

21 A. At the store.

22 Q. Do you remember who else was there? A. Mr. Sam
23 Hardy was there, because I owed him, and turned it over to
24 him.

25 Q. Do you remember who else was there?

26 A. I did not take any notice particularly at that time.

1 Q. Where did you go after you left the store?

2 A. I don't remember. I don't remember whether I had stopped
3 work - whether I had been to work that day, or not.

4 Q. Was it in the morning or evening? A. I don't know.

5 Q. What day of the week was it? A. I don't know.

6 Q. Was it morning or evening when you and Dr. Holland had
7 your settlement? A. It was at night when I

8 received the deed of gift or release deed, and he had just
9 returned from town. He went to the Clerk's Office, and got
10 it, and gave it to me.

11 Q. How long was that after you got the paper and you paid
12 Mr. Sam Hardy? A. It was the same day.

13 Q. How long was it after Dr. Holland gave you the release?

14 A. Probably a day or two; it was not long.

15 Q. You don't remember what you did between the time Mr.
16 Gus Holland gave you the paper which you gave to Mr. Sam
17 Hardy and the time you got the release from Dr. Holland?

18 A. I was working on the section.

19 Q. How many times in these days did you go in Mr. Gus
20 Holland's store? A. I don't know, but I

21 generally go there every night. I generally did my trading
22 there.

23 Q. How long did you stay in Mr. Gus Holland's store
24 after he gave you that paper? A. I don't know.

25 I might have stayed there some time; I generally do my
26 trading there.

1 Q. Do you remember who you talked to?

2 A. No, sir.

3 Q. How often would you see Mr. Elihu Joyner about there in
4 the year 1903? A. I generally saw him most
5 any time.

6 Q. He was living at Holland? A. Yes, sir, he had
7 been living there every since I knew him.

8 Q. And he had an office or store how far from the railroad?

9 A. I don't know whether he was running a store at that
10 time; he has been railroad agent for some time.

11 Q. It is a fact you would see him pretty near every day?

12 A. Yes, sir.

13 Q. Did you have any business with him?

14 A. Yes, sir, when he ran the store.

15 Q. You don't remember whether you had any business with him
16 along about that time? A. No, sir, I don't know

17 whether I did. After the deed of trust was lifted from him
18 I did not have any. Dr. Holland lifted the deed of trust.

19 Mr. Elihu Joyner had it first, and I got Dr. Holland to lift
20 it, and then Mr. A.A. Holland lifted it and cleared the land.

21 Q. Have you had no business with Mr. Elihu Joyner?

22 A. No, sir.

23 Q. How many other deeds have you given besides the deed of
24 trust and this deed which you gave to Elisha Hare?

25 A. I did not have any other to give.

E.T.HARE. (Colored), being duly sworn, testified as

follows:

Examined by Mr. Withers:

Q. State your name? A. Elisha Thomas Hare.

Q. Your age? A. I don't really know. I am about forty-four or forty-five or six, or seven.

Q. Your residence? A. Holland.

Q. Your occupation? A. Trying to farm.

BY MR. HOLLAND: One of the counsel for the defendants states that he waited at least one hour this morning on counsel for the plaintiff before beginning to take the depositions in this case. He states that he now has an important engagement with an attorney from Petersburg, Mr. George S. Bernard, made several days ago, and that on account of it he will have to leave. He reserves the right to cross-examine any witnesses that may be introduced in this case.

By Mr. Withers:

Q. Did you have any bargain with Mr. A.A.Holland in February, 1903, or thereabout, for the sale of your standing timber? A. Yes, sir.

Q. Please state what your bargain with Mr. Holland was?

A. My bargain was at the time he came over there - at least I went to him first, I think - I don't know whether I went to him first, or not, but he spoke of it, of buying some

1 timber, and he was buying at the time, and I sold him some .
2 cord wood, but had not cut it. I had promised the man I
3 would cut it, and he was so lengthy about coming to mine that
4 I thought I would go to him, and asked if he was buying, and
5 he said yes, and he came there and looked at it, and there
6 was one burned place of five or ten acres, and I asked how
7 long he wanted to cut it, and he said three years, and I
8 told him there was a place there that the fire went over
9 that he could cut all of it in pieces from the size of his
10 leg, or he could cut it all, but the other I would not like
11 for him to cut not over twelve inches, but over in my field I
12 would like to cut for him, but if I knew that he would not
13 cut it inside of three years I would not let him have it
14 at any price, because I wanted to clear it, and I was back
15 in clearing it, and in these days a man don't make much
16 anyhow. Mr. Holland and I did bargain in three years.
17 He told me that he would after that see me again concerning
18 it, and Mr. Holland didn't say anything more to me about
19 it that I know of, and the next time I spoke to him I asked
20 him when he was going to come with the mill, and there were
21 some trees I wanted reserved to build a shack, and that he
22 would saw them when he came, and he said if that was all he
23 would agree to give a little more, and I never saw Mr.
24 Holland any more concerning the timber until I heard that
25 he had sold it, and I don't know really how long it was,
26 but I heard he had sold it, whether twelve months or six

1 months, or eight months, but I didn't say anything to him
2 until I heard he had sold it.

3 Q. How much was he to pay you for your timber?

4 A. \$50.

5 Q. How much were you to sell him? Down to what size across
6 the stump?

7 A. In the burned woods I told him
8 he could cut it clean, that I did not care if he cut it all.
9 I don't know how many acres there are. In the old field I
10 would like to cut it for him.

11 Q. Down to what? A. Twelve inches.

12 Q. As to the other? A. Twelve inches excusing
13 that burned piece, but that burned piece I did not care if
14 he cut it all.

15 BY MR. BURGESS: Counsel for the defendant here
16 notes the same objection in regard to the testimony
17 of this witness as noted to the testimony of other
18 witnesses who are not parties to this suit, and who
19 are not interested in this litigation, it being a
20 fact that this witness has granted an extension of
21 time to the A.B.Cramer Lumber Company, the ulti-
22 mate grantees of A.A.Holland.

23 By Mr. Withers:

24 Q. How long was he to have in which to cut the timber?

25 A. Three years.

26 Q. Did you have any bargain or any talk with Crocker &
Brother about the sale of this timber? A. I saw Mr.

1 Crocker and somebody at Holland at the hotel. I don't know
2 how long he had bought it.

3 Q. That was after he had bought it? A. Yes, sir,
4 after he had bought it from Mr. Holland. Somebody said there
5 was the Crocker Brothers, and I reckon they are looking for
6 the route for the mill, and I said I reckon I had better
7 speak to him. I said "Captain Gus told me about reserving
8 some trees, and he told me to mark them because they might
9 die, and I have been waiting because I wanted to build, and
10 I have been waiting to mark the trees --

11 Q. It is not worth while to tell about that. What ever
12 bargaining you made for the sale of this timber, as I under-
13 stand, was made with Mr. Gus Holland? A. Yes, sir.

14 Q. And Mr. Gus Holland sold to the Crocker Brothers?

15 A. So I understood.

16 Q. Did you ever sign a deed or contract conveying this
17 timber to Crocker Brothers? A. No, sir.

18 Q. Did you ever sign a deed or contract conveying this
19 timber to Mr. A.A.Holland? A. I have not the
20 knowledge of doing so.

21 Q. You know whether or not you signed such a deed?

22 A. The record says I appeared before Mr. Joyner and Mr.
23 A. Edwards and signed this contract.

24 Q. What contract? A. The contract for this timber
25 between Mr. Gus Holland and myself.

26 Q. Conveying it to whom? A. Mr. Gus Holland, but

1 not to Mr. Crocker. My wife at that time was unable to go,
2 and I never heard the contract. If I signed the contract I
3 never remember hearing a word of it. I told Mr. Joyner I
4 didn't remember putting my hand to a contract. I would not
5 tell a lie for \$50. I will tell you what Mr. Gus Holland
6 told me. He said he would bring the contract in a few days,
7 and I know that he did not bring it to my house, and I know
8 that I did not carry my wife there, and I know that I did
9 not appear before Mr. A. Edwards, and whether I ever signed a
10 piece of paper of that kind I don't remember anything about
11 it.

12 Q. If you had signed a deed conveying away your farm, you
13 would know something about it? A. It looks so.

14 Q. If you signed a deed conveying away the timber, you
15 could not have done it without knowing it?

16 A. It looks so.

17 Q. Don't you know you did not sign any such paper?

18 A. I think I know it.

19 Q. You certainly know that you never signed such a paper
20 knowingly? A. Yes, sir, I certainly do.

21 Q. And if you ever signed it you were drunk or asleep or
22 crazy? A. Yes, sir. I will tell you why I

23 know it so strong. At the time this timber was sold, Mr.
24 A. Edwards had claim upon my land, and I did ask him before
25 I sold it whether it would be agreeable, and he said yes, and
26 I don't know how long, because I would trust Captain Gus

Holland as long as I would anybody. Sometime after I did not hear anything about it, and one day Mr. Edwards called me to the window and asked me something about an account, and I said "I am glad you called me; I said have you ever got your money", and he said "yes, I have got it, and forget it, and I aimed to tell you", and I said "I am glad you told me, because I never knew it, and nobody told me". Do you remember when Mr. Edwards was sick - -

BY MR. BURGESS: Counsel for the defendant here objects to witness being prompted by A.J.Howell.

BY MR. WITHERS: A.J.Howell has not corrected or prompted the witness in any way. The witness asked if he knew when Mr. Edwards was sick, and Howell responded that he did not.

BY MR. BURGESS: Counsel for the defendant replies that he, A.J.Howell, is rumbling to the witness in an undertone, and that he did not hear what Howell said to the witness. Counsel for the defendant here again respectfully requests that these witnesses who were called to testify be excluded from the room.

NOTE: The Notary before whom these depositions are taken cautions the witness that he must not ask any one for assistance in answering the questions propounded to him, and instructs A.J.Howell that he is not to correct or prompt the witness in any way.

Witness: I don't remember what time it was, only I know that

1 he called me to the window, and told me that he had got the
2 money, and I told him that I had not signed anything. I
3 don't know how long it was before that time, but I know I
4 had not signed anything, and I know I generally try to read
5 whatever I sign.
6 By Mr. Withers:
7 Q. You can be positive about that?
8 A. I don't know anything about signing it. I have not
9 met before anybody to sign anything.
10 Q. If you don't know you did sign it, don't you know you
11 did not sign it? A. I don't know anything of
12 signing it. I don't remember anybody calling my attention
13 to it. So far as the way it is written I can contradict it.
14 I have never carried my wife before anybody to sign it.
15 Q. The deed, as recorded, says your wife also signed and
16 acknowledged before Mr. Joyner. Please state if your wife
17 at that time was in condition to go any where to sign any
18 papers? A. She was not.
19 Q. Did she sign any papers? A. Not that I know
20 of. If she did somebody else carried her, and I don't think
21 they did, because she don't go with anybody else but me.
22 Q. Did she go with you to Mr. Joyner?
23 A. No, sir.
24 Q. Did you ever acknowledge before Mr. Joyner that you did
25 sign a paper conveying this timber?
26 A. No, sir.

1 Q. When you bargained with Mr. Holland, I understood you
2 to say that he was to have three years in which to cut the
3 timber?
4 A. Yes, sir.

5 Q. How does the deed at the Clerk's Office read?

6 BY MR. BURGESS: The question is objected to on the
7 ground that the deed is the best evidence of how
8 it reads. Counsel for the defendant calls upon
9 counsel for the complainant to produce it.

10 BY MR. WITHERS: I vouch the record.

11 A. I don't know; I can just go by what I heard say.

12 BY MR. BURGESS: Any answer that may be given to
13 this question is objected to on the ground that
14 the witness states that any evidence he may give
15 will be hearsay testimony.

16 Witness: I can't say how it reads. I heard Mr. Gomer read it,
17 but I can't say how it reads. I did not read it. The first
18 time I went there and asked him about it, he could not find
19 it, and that was in September or October, and the next time
20 I went there he found it after about an hour's hunting, that
21 I sold to Mr. J.D.Crocker, and I told him that was untrue, and
22 he said I ought to mind, that I must have sold it to him, and
23 I said "no, sir, Mr. J.D.Crocker had not said anything to
24 me about buying timber", and he said it was so recorded.

25 By Mr. Withers:

26 Q. When Captain Gomer read you from the record how much
time did the record say? A. I think three years -

three years if needed.

BY MR. BURGESS: The question and answer are objected to for the reason stated above.

By Mr. Withers:

Q. What did it say? A. Three years if needed.

I am not sure about needed, and 6 per cent on the purchase price.

Q. Did Mr. Holland say anything to you about the 6 per cent?

A. No, sir, if he had I would have told him yes outside of the burned piece.

Q. Do you know anything about having the right to get interest on this money after the three years was over?

A. I only know from what I heard a gentleman say in the neighborhood from the way the thing was recorded.

Q. And that was long after March, 1903?

A. That was here last fall.

CROSS EXAMINATION

By Mr. Burgess:

Q. Please take the pencil and piece of paper which I now hand you, and write your name?

A. That is the way I sign it.

Q. Now, take a pen and write your name?

NOTE: The witness writes his name on paper marked exhibit H.

Q. What is your wife's name? A. Emma A. Hare.

1 BY MR. WITHERS: Counsel for the complainant re-
2 quests counsel for the defendant to allow him to
3 inspect the original deed purporting to be a deed
4 from the witness to J.D.Crocker & Brother, which
5 request counsel for the defendant refuses.

6 BY MR. BURGESS: Counsel for the defendant replies
7 that before presenting the deed to the witness, and
8 before offering it in evidence, that it will be
9 shown to counsel for the complainant.

10 By Mr. Burgess:

11 Q. As I understand you, you claim that in the month of
12 March your wife's physical condition was such that she could
13 not leave home? A. Yes, sir.

14 Q. Do you mean that she was pregnant?

15 A. Yes, sir, expecting to be -- yes, sir, you are right.
16 I was studying about something else at the time you spoke.

17 Q. Did she give birth to a child?

18 A. Yes, sir.

19 Q. When was this child born? A. I think the
20 child was born about the 18th day, I think, or somewhere
21 along there, of April or May, or somewhere along there. Which is it?

22 Q. You have been cautioned about that.

23 A. I think it was born the first of May.

24 Q. Then it was not born the 18th of May?

25 A. No, sir, the first of May, I think.

26 Q. What year? A. 1903, I think.

1 Q. Was it born in May, 1904? A. Yes, sir, I
2 believe I have one born in 1904, but not that one.

3 Q. How many children has your wife had since this child
4 you mentioned? A. One.

5 Q. How old is the last child she has had?

6 A. About 8 months old, I think.

7 Q. How old is the next child? A. I believe it
8 will be three years old quite soon. I have the record, but I
9 did not look at that when I left home.

10 Q. You say you have the record? A. Yes, sir.

11 Q. Where is this record? A. At home.

12 Q. What is it in? A. On a family record, a
13 circular sent from somewhere, - some old pictures.

14 Q. Who wrote it? A. My daughter.

15 Q. What month is this? A. It seems to me this
16 is September.

17 Q. In what month does the child have its birthday?

18 A. Do you mean my child?

19 Q. Yes? A. In May.

20 Q. What month is your last child's birthday in?

21 A. To be twelve months old?

22 Q. Yes? A. I don't know to be sure.
23 When I say a thing I want to be sure I am saying right. I
24 don't remember.

25 Q. Why are you sure your other child's birthday is in May?

26 A. Because I am.

1 Q. Are you prepared to swear that the child next to the
2 youngest is as much as three years old?

3 A. Yes, sir.

4 Q. Then how old is that child?

5 BY MR. WITHERS: The question is excepted to as
6 irrelevant.

7 A. May, June, July, August and September: About three
8 years and four months old.

9 By Mr. Burgess:

10 Q. Why is it you can remember that child's birthday, and
11 can't remember the last?

12 A. I reckon I could
13 remember the last. It is nine months old now, or in its
14 nine months old.

15 Q. If this deed was drawn in March, and your child was
16 born in May, about the 18th of May, I believe --

17 A. I said 18th first, but 8th I told you afterwards.

18 Q. Are you prepared to say it was the 8th day of May?

19 A. I think so.

20 Q. You will be summoned to return here at some time after
21 to-day to further testify in this case. At that time I
22 would request that you bring the record which you say you
23 have at home?

24 A. All right, sir.

25 Q. If your child was born the 8th of May, and this deed
26 was made about the middle of March, then your child must not
have been born for about two months after this deed is sup-
posed or is alleged to have been executed?

1 A. I could not tell you when the deed was made. I bar-
2 gained with Mr. Holland on the 7th day of March. The paper
3 here in my pocket says the 21st of March, which calls for Mr.
4 J.D.Crocker, so I can't say when it was made. I did not
5 see it.

6 Q. Will you produce the paper you have in your pocket?

7 A. Yes, sir.

8 Q. Will you please file that paper in evidence?

9 NOTE: The same is filed marked exhibit I.

10 Q. This paper is a letter from Col. E. E. Holland, dated
11 March 14th, 1906, addressed to you; when did you receive this
12 letter?

13 A. I reckon I got it about the
14 next day after it was written.

15 Q. When did you make reply to it?

16 A. I did not make any. I saw Mr. Gomer, and asked Mr.
17 Gomer concerning it, and told him I had not sold any timber
18 that way, and he said what was recorded was recorded, so I
19 never said anything to Mr.E.E.Holland. He said there was
20 not any worth while to wring or twist, that what was re-
21 corded was recorded, so I did not say anything to Mr. Holland.

22 Q. You repeated, or started to repeat, in your leading
23 examination, a conversation which took place between you and
24 Mr. J. D. Crocker; where did that conversation occur?

25 A. Right at Holland.

26 Q. What year?

A. I don't know whether
it was the same year that he bought, it or not, but it was either

1 that year or the next year, I don't know which.

2 Q. Was it in the winter time or summer time?

3 A. In the winter time, because there was a snow on the
4 ground at that time.

5 Q. Can you tell us whether it was the first or second winter
6 after he bought it? A. No, sir, I cannot.

7 Q. What did you say to Mr. Crocker?

8 A. I told him that I understood that he had bought some
9 timber up there on the Lee track, and he said "yes", and I
10 went on to tell him that I had sold to Mr. Gus Holland; I
11 was anxious to find out about some trees I had reserved. I
12 did not ask for any agreement with Mr. Gus Holland about it,
13 and he said any arrangement I made with Mr. Gus Holland he
14 did not want to change at all. I saw him after that, but he
15 never said anything to me about the timber. I don't know
16 which it was, but it was a Crocker.

17 Q. Did he ask you to sign a paper? A. No, sir.

18 Q. Did you ever mention to him that you had never given
19 Mr. Holland a deed? A. No, sir.

20 Q. Have you ever given Mr. Craner, or any of his representa-
21 tives, any right to cut this timber?

22 A. Yes, sir, Mr. Gay came sometime. You might ask what
23 day it was, but I have forgotten it. I have the paper at
24 home. He came up and told me that the rest were signing, and
25 that I would have to sign and had as well sign, and he said
26 it was legally their timber, and I had as well not give any

1 trouble, and I told him I had never made any agreement; that
2 if Mr. Gus Holland had asked me about it that outside of
3 that burned piece of woods I would have done it, but he
4 did not, and since then I did not have anything to make a
5 bargain on. I told him I would like to consider, and he said
6 there was no use to consider, that the rest who had not
7 signed were going to sign, and he asked who I was led by,
8 and I told him nobody, and he said I must be led by some-
9 body, and I said no, and I said I had agreed for three years,
10 and he wanted two more, and he said it was recorded so, and
11 I asked if there would be any hereafter about it, and I
12 asked about the trees, and he said more of them if I wanted,
13 and he said he would not cut more than twelve inches, and
14 that these that had not signed had to sign whether or not,
15 and I thought there was no use to be driven to it, so I
16 thought I had as well sign.

17 Q. You have the general reputation of being a man of the
18 average amount of sense in your community?

19 A. No, sir, I have not much sense.

20 Q. Have you the general reputation of being simple?

21 A. Yes, sir.

22 Q. Are you considered anything like an idiot?

23 A. Like what?

24 Q. That is one without any sense at all?

25 A. No, sir, I reckon not.

26 Q. Do you mean to tell me that you did not know that if

1 you had never made a deed, or signed a deed, and that your
2 wife had never signed a deed, that Mr. Holland could not
3 sell this timber to Mr. Crocker or to Mr. Cramer?

4 A. I mean to say to you this: I have not appeared before
5 Col. Holland nowhere, not any where at all with my wife, and
6 nobody, since we bargained for this timber. I mean to say
7 that. You asked if my wife has signed; I can't say. She
8 says she has not, but I can almost swear nobody else has
9 carried her.

10 Q. When was this money paid you for the price of this
11 timber?

A. That Mr. Gus Holland paid?

12 Q. Yes?

A. I don't know. It was not paid
13 to me - well, it was paid to me, but Mr. Edwards received it.
14 The day he called me to the window he told me he had received
15 it a few days before. I was plowing, but how long I don't
16 know.

17 Q. Did you ever sign a paper before Mr. Elihu Joyner?

18 A. Yes, sir, one not long ago.

19 Q. How many papers have you signed before Mr. Elihu Joyner?

20 A. I don't know, sir, to save my life. I signed some
21 bank notes before him, and signed some real estate notes.

22 Q. And some deeds?

A. Yes, sir, some deeds.

23 Q. Did you sign any deeds before him in the year 1903?

24 A. No, sir.

25 Q. Are you sure you did not?

A. I am sure I

26 did not.

1 Q. Would you know your signature if you saw it?

2 A. I reckon so. Sometimes I will and sometimes I wont. I
3 reckon I would know it.

4 Q. Do you mean to say there are times when you don't know
5 your own signature? -

6 A. No, sir, I don't think
7 there are.

8 Q. Then, what do you mean by saying sometimes you knew it
9 and sometimes you didn't?

10 A. I say sometimes
11 there are times when I might know it and sometimes I might
12 not.

13 NOTE: Counsel for the defendant here hands deed
14 to counsel for the complainant.

15 Q. Tell me if that is your signature?

16 A. It is made entirely like mine only one little thing.

17 Q. What is that?

18 A. I never cut anything like that (referring to the T), and
19 I never make an H with that part of it (referring to the first
20 stem).

21 Q. Tell me exactly what you refer to in the H?

22 NOTE: Witness refers to the first stem.

23 Q. The first line in the letter?

24 A. Yes, sir.

25 Q. Do you mean to say that you only make one line in making
26 an H?

A. I generally start like making an
S.

Q. Take this pencil and this piece of paper and show me how

1 you start?

2 NOTE: The paper is filed marked exhibit J.

3 Q. What is the difference between that H and the H on the
4 deed?

A. That is all the difference I

5 see.

6 Q. Now, tell me are you prepared to swear that you did not
7 write your name on that paper?

A. I have not the

8 knowledge of writing it.

9 Q. I caution you for I expect to contradict you?

10 A. That is all right.

11 Q. Did you not, on or about the 21st day of March, in the
12 presence of Mr. Elihu Joyner, write your name on this piece
13 of paper?

A. I was not at home the 21st

14 day of March. I was gone away; at least I went down to my
15 sister's somewhere between the 15th and the 20th, and stayed
16 a week, and I do not think I was at home at that time. I am
17 not sure, but I do not think I was at home. I will not swear
18 I was not at home.

19 Q. Where does your sister live?

A. At Portsmouth.

20 Q. How do you fix in your mind the time you went to Ports-
21 mouth to see your sister?

A. I just remember

22 I went there. I tell you how I remember: I was expecting
23 some money to pay to Mr. Edwards, and after selling this
24 timber it afforded me to believe I could spend this money
25 to go there, and this other money would come in the place of
26 it.

Q. How long after the money was paid to Mr. Edwards was it before you went to Portsmouth?

A. That is something else I could not tell you. I can only tell you what he told me. I never saw it.

Q. Can you swear that you were not in the town of Holland on the 21st day of March, 1903?

A. No, sir, I did not say that I could. I say I do not think I was at home.

Q. Are you prepared to swear that you did not appear before Mr. Elihu Joyner somewhere on the 21st day of March and sign a paper?

A. I just told you that I do not think I was at home. I have not the knowledge of appearing before Mr. Joyner concerning these papers. If I did I have forgotten it. You may think it, but I would not say anything for the small amount of that.

Q. It is very necessary that you should be positive. Your testimony is to the effect that Mr. Elihu Joyner has committed a felony, that he has forged your name, and that of your wife, which is a penitentiary offense. Now, if you wish to change your testimony, you will have an opportunity to do so.

A. No, sir, I shall not change anything, because I said I have not the knowledge of signing anything. I can say I have not took my wife and carried her before anybody. I will swear to that.

Q. Why will not you swear to that, that that is your signature, or is not?

A. I don't remember making

1 a letter like that since I have been born. I have made a
2 letter like that excusing that point.

-----oOo-----

3
4
5
6
7 The hour of 6 o'clock having arrived, the further taking
8 of depositions in this case is adjourned until to-morrow
9 morning at ten o'clock.

-----oOo-----

10
11
12
13 SECOND DAY,

14 Suffolk, Virginia, September 20, 1906.

15 Met pursuant to adjournment of yesterday.

16 PRESENT: Same parties as heretofore.

17
18 E.T.HARE, (Colored), takes the stand for further cross
19 examination

20 By Mr. Burgess:

21 Q. When you were on the stand on yesterday you testified
22 that you had a family record which would show the exact date
23 of the birth of your child in the year 1903; will you please
24 tell me if you have that record with you?

25 A. No, sir, I have not.

26 Q. Where is that record? A. At home somewhere; I don't

1 know exactly where it is.

2 Q. When did you last see that record?

3 A. I could not tell you that. I have not remembered nothing
4 about looking at it not since the last child was born.

5 Q. How is it when you have not refreshed your memory, or
6 examined the record recently, that you can be so exact
7 as to the date of this child's birth, when you can not be so
8 exact about the days that your other children were born?

9 A. I did not tell you exactly. At first I made a mistake,
10 and said it was about the 18th of May, and then said it was
11 the 8th day of May. I was not expecting to speak about the
12 children, or noticing about the children, or I would have had
13 it all perfect.

14 Q. Now, that you have had time to think the matter over, and
15 refresh your memory, are you still prepared to swear that
16 this child was born on the 8th day of March, 1903?

17 A. I did not say the 8th day of March; the 8th day of May,
18 I think, was his birthday.

19 Q. Are you prepared to say that he was born on the 8th day
20 of May? A. I think I is.

21 Q. Have you thought over the matter of signing the deed which
22 was presented to you yesterday? A. Yes, sir.

23 Q. Are you still prepared to swear that you never signed
24 that paper? A. No, sir, I never signed it.

25 Q. As I understand you, you were not prepared to swear on
26 yesterday positively that that was not your signature. Do I

1 understand you to say that this morning you are prepared to
2 swear?

A. Yes, sir, I think so.

3 Q. Do you mean to say that you know nothing of such a
4 paper?

A. I knows nothing of the paper at
5 all.

6 Q. Did Mr. Joyner ever present this or any similar paper
7 to you, and ask you if you acknowledged it to be your deed?

A. No, sir.

9 Q. Did you receive a letter from Col. Holland?

A. Yes, sir.

11 Q. Have you that letter?

A. Yes, sir, I think
12 so. I left that letter here yesterday.

13 Q. Did you make any reply to that letter?

A. No, sir.

15 Q. Have you seen anybody in regard to this timber since
16 that time?

A. No, sir, nobody but Mr. Gay.

17 Q. Tell me what transaction has taken place between you and
18 Mr. Gay since you received the letter from Mr. Holland?

19 A. Mr. Gay come and brought the money, and said it was to
20 pay the extension of time, and it seems like something in
21 June, the paper may show it. I taken the money and he said
22 some of them were signing, and that the others would have to
23 sign it, and I signed it.

24 Q. Is that your signature (showing the witness exhibit F)?

A. Yes, sir.

26 Q. I now refer to the same paper; is that the signature of

- 1 J.O.Everett? A. No, sir; I did it myself.
- 2 Q. Did he authorize you to do it?
- 3 A. No, sir.
- 4 Q. Why did you do it? A. Because Mr. Gay
- 5 told me I ought to do it, and he said all that timber would
- 6 be mine since he sold it. I told him I did not know, but any-
- 7 how Jim and I would see about it. I told him he did not
- 8 sell me the timber, and only sold the land, and Mr. Gay said
- 9 it would be all right with Jim, and I could do whatever was
- 10 necessary.
- 11 Q. You signed Jim's name? A. Yes, sir.
- 12 Q. Without saying anything to Jim about it?
- 13 A. Yes, sir.
- 14 Q. And took the money? A. Yes, sir.
- 15 Q. The timber that this paper refers to was the timber on
- 16 the land of J.O.Everett? A. Yes, sir.
- 17 Q. What about the timber you sold to Mr. Holland? Have
- 18 you granted an extension about that, too?
- 19 A. Yes, sir.
- 20 Q. Did you tell Mr. Gay, when he came with this paper to
- 21 you, that you never signed that deed? A. I think I did.
- 22 Q. Are you positive? A. Yes, sir, He asked
- 23 me had I sold to Mr. Crocker, and I told him no, sir, I had
- 24 never sold Mr. Crocker any timber, that Mr. Crocker had never
- 25 said anything to me about any timber, and he asked me if I
- 26 had not signed any paper. I told him I did not care who got

1 it, all I wanted was to have the timber out of the way at
2 that time, and so it did not bother my mind.
3 Q. Are you still positive you were in Portsmouth on the
4 21st day of March? A. I think so.
5 Q. Will you please state why you say you were in Portsmouth?
6 A. Because I went away sometime between the 15th and 20th,
7 and I never come back for a week, and the reason I know it
8 was between the 15th and 20th I had told Mr. Edwards I was
9 going to pay him some money and after I had sold the timber
10 I told him that he could get that money, and I spent the
11 little money I had, and I went at that time to see my sister,
12 because she was sick, but to-day what day I went, or what
13 day I came back I don't know, because I didn't note it.

RE DIRECT EXAMINATION

By Mr. Withers:

17 Q. Do you know positively whether or not you signed any
18 contract or deed conveying any timber to Crocker & Brother?

19 A. No, sir, I never did.

20 Q. You are positive of that? A. Yes, sir.

21 Q. Absolutely certain? A. Yes, sir.

22 Q. Did you ever have any bargaining with Crocker & Brother
23 for the sale of timber? A. No, sir.

24 Q. Did you promise or agree with Mr. Holland to convey
25 the timber to Crocker & Brother? A. No, sir.
26

J.K.HOLLAND, being duly sworn, testified as follows:

Examined by Mr. Withers:

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

A. James K. Holland; age fifty; residence Holland; occupation farmer; I know the parties to this suit.

Q. Mr. Holland, do you own land in Nansemond County near Mr. David Milteer and A.J.Howell and others?

A. Yes, sir.

Q. Did you own that land in February, 1903?

A. Yes, sir.

Q. Is this a part of the same line of timber bought by Mr. Holland in February, 1903? A. Yes, sir.

Q. This was bought about the same time that your neighbors' was? A. Yes, sir.

Q. And formed a part of the same transaction?

A. Yes, sir.

Q. Please state fully and in your own way what your bargain with Mr. Holland for the sale of this timber was?

BY COL. HOLLAND: This question and all other questions relating to said bargain are excepted to for the reason that the evidence sought to be adduced is irrelevant and inadmissible, and the same exception is made to any answers to any questions of like character.

A. Mr. Holland came there some two or three times, and wanted

1 to buy, and I did not want to sell at that time, and told
2 him the lumber was growing. He came some two or three times,
3 I suppose - as many as three times, if not four, - I told
4 him I did not care to sell, and he said all the rest were
5 going to sell, and it would be a good opportunity to sell,
6 and after a while I agreed to sell to him if he would give
7 me anything like worth the timber. We walked over the timber,
8 and he told me what he would give me, and walked around the
9 lines, and I agreed to sell to him at a certain price, and
10 then he went away, and it was several days before he came
11 back, and I told him I did not think that was quite enough, and
12 he only put on \$15 more. There was not anything else said
13 about it until the day he came, he and Mr. Joyner, to fix
14 up the contract, and we were out there, and when they came
15 to the house he told Mr. Joyner he bought it for \$200, but
16 he promised to give me \$15 more, making \$215 for the lumber,
17 and I said to him, "Mr. Holland, how long do you want to
18 cut this lumber in", and he said, "Well, I don't know; I am
19 going to cut it right away, I am going to put a mill at
20 Frank Gordon's gate, on the Lee path, and am going to wagon
21 the lumber out to Elwood, " and I said "Mr. Holland, you
22 have a pretty good way except one hill, and that is pretty
23 bad in winter". He said he wanted a little longer time
24 than that to get it, and I said I did not want but one year,
25 and he said "will you give me two years", and I said I don't
26 want to give you two years, but will you cut it in two years,

1 and he said "yes; if I don't cut it in two years the lumber
2 is yours back". That is what he told me, that "if I don't
3 cut it in two years the lumber is yours back". The stumpage
4 was twelve inches on the stump 15 inches from the ground
5 with no top turf scraped away. He was sitting there telling
6 Mr. Joyner how to write it, right there in my house. After
7 he got through writing it I asked Mr. Joyner to read it. Mr.
8 Joyner read it. The stumpage was all right, and the balance
9 was all right, and he read it down to two years from date, add
10 I said "don't put it two years from the time you commenced to
11 cut it, but two years from date", and if he didn't cut the
12 lumber the timber was mine back. I could not read it - I
13 can't read and write.

14 Q. You say you can't read and write?

15 A. No, sir.

16 Q. When Mr. Joyner read the contract was Mr. A.A.Holland
17 present?

18 A. Yes, sir, right there in the
19 room.

20 Q. When Mr. Joyner wrote the contract was Mr. A.A.Holland
21 present?

22 A. Yes, sir, he told him how to
23 write it, and he gave him the form to write it on.

24 Q. And you say you told him to write in the contract that
25 he was to have two years in which to cut it?

26 A. Only two years in which to cut and remove the lumber.

Q. And that is the way Mr. Joyner read it to you?

A. That is the way Mr. Joyner read it to me.

*Jim Crocker & Jack Holland
will contribute this*

check

On the same day 9th Feb. 1911

See page 145

1 Q. Before you signed it? A. Yes, sir.
2 Q. And you and your wife signed it? A. Yes, sir.
3 Q. And he paid the money? A. Yes, sir, have
4 re a check for it.
5 Q. When did you next hear anything about this timber con-
6 tract with reference to the time the purchaser had to cut
7 the timber? A. It was some time last fall.
8 There was not anything said about it. The time had run out,
9 and I thought the timber was mine. I did not have any
10 business to run after him to see when he would cut it.
11 Q. How did the recorded contract at the Clerk's Office
12 read? A. Three years from date, and two
13 more if needed by paying interest.
14 Q. On the purchase price? A. That is what Mr.
15 Lawrence read to me.
16 Q. Were you surprised when you heard the deed read that
17 way? A. Yes, sir, I certainly was sur-
18 prised, and I did not think it was that way.
19 Q. About when was this? A. That was along
20 early in the spring, along in February, I think.
21 Q. Of what year? A. Of this year.
22 Q. When Mr. Lawrence read it to you?
23 A. Yes, sir.
24 Q. Then that was the first time you had any positive
25 knowledge that the deed was different from what you thought it
26 was? A. Yes, sir.

1 Q. You say you had heard sometime late last fall that they
2 were claiming five years? A. Yes, sir, but I
3 really thought my time was out, and I heard Mr. A.A.Holland
4 was here, and come to see and have the record searched, and
5 he was getting ready to come to Suffolk, and I walked out
6 from his house and came to the depot and spoke to him about
7 it, and I said "my time has been out some time on the lumber,
8 and I have been hearing that they claim five years." He
9 says "Tony I really think the time is out, but the best way
10 for you to do is to go to the record and find out; I really
11 think your time is out". He said "you get some attorneys to
12 see if your time is out".
13 Q. Then, when you heard that somebody had been claiming
14 the right to cut your lumber at any time in five years, you
15 went to see Mr. Gus Holland about it?
16 A. Yes, sir.
17 Q. He was the man to whom you sold?
18 A. Yes, sir.
19 Q. Did you know at that time who owned the timber?
20 A. No, sir, I did not.
21 Q. You say Anthony Holland was with you at that time?
22 A. Yes, sir, he heard the remark Mr. Holland made. He said
23 "you gave a shorter time than anyone else, and I think your
24 time is out, but you can go to the record and find out.
25 Q. That is what A.A.Holland stated when you asked him
26 about it? A. Yes, sir.

1 Q. You are ready and willing to pay back the money you re-
2 ceived if you get back your timber?

3 A. Yes, sir, if they pay me damage for what they have done
4 to the land outside of the lumber that I did not sell, and
5 also the lumber I did sell for cutting the right of way
6 through the lumber which I reserved in the contract. If they
7 will pay me that back, and the damage, I am willing to pay
8 the money back to Mr. A.A.Holland.

9 Q. For what did you sell your timber?

10 A. \$225.

11 Q. Have you had the value of your timber recently assessed
12 by competent parties? A. Yes, sir.

13 Q. How much is that timber worth today?

14 BY COL. HOLLAND: The question and answer are ex-
15 cepted to as irrelevant.

16 A. \$700 down to twelve inches.

17 By Mr. Withers:

18 Q. Who made this estimate? A. Joseph F. Holland.

19 Q. Is he a person who usually estimates timber?

20 A. Yes, sir, I suppose he is. He has been estimating for
21 several parties for some time.

22 Q. I herewith hand you a paper signed Joseph F. Holland,
23 dated July 10th, 1906, which states that he estimated the
24 timber on your land to be two hundred thousand feet valued
25 at \$3.50 a thousand; is that the slip Mr. Holland gave you?
26

BY COL. HOLLAND: The question is objected to, and objection is also made to the filing of said paper as evidence.

A. Yes, sir.

NOTE: The paper referred to is filed marked exhibit K.

By Mr. Withers:

Q. Did Mr. A.A. Holland state to you that he expected to mill this lumber? A. Yes, sir he certainly did.

Q. Did you rely upon his statement?

A. Yes, sir, I did.

Q. Was that any inducement to sell to him?

A. Yes, sir, I told him it would be some inducement for me to sell, that I needed some lumber, and that the mill would be close.

Q. Because he told you the mill would be close at hand, and you could get the lumber, that made you sell more readily to him? A. Yes, sir, certainly.

Q. Has he put a mill there? A. No, sir he has not.

CROSS EXAMINATION

By Mr. Holland:

Q. What was your timber worth in 1903?

A. I don't know, sir; I did not have it estimated then.

Q. What was timber selling for in 1903 per thousand?

1 A. Something like \$1 or \$1.25 a thousand, and I suppose I
2 could have gotten a dollar and a half for mine. Mine was
3 nearer to the railroad than the rest of them was.

4 Q. You sold your timber down to twelve inches, did you?

5 A. Yes, sir, fifteen inches from the ground.

6 Q. Mr. Holland, when did you first find out that this
7 timber had been sold to other parties?

8 A. Along last fall, just before Christmas. Christmas I
9 cut my foot, and could not get about, and I could not see
10 Mr. Holland, but I went to see him as soon as I could.

11 Q. You did not hear the rumor floating around in the
12 neighborhood as testified to by J.L.Harris?

13 A. No, sir, I did not hear anything about it.

14 Q. Of whom did you find out last fall that the timber
15 had been sold?

A. I don't know, but I heard it.

16 Q. You heard it had been sold to whom?

17 A. I heard Mr. Cramer.

18 Q. Did you receive a letter from me sometime in March?

19 A. Yes, sir.

20 Q. Asking for an extension?

A. Yes, sir.

21 Q. Did you reply to that letter?

A. No, sir. I

22 did not think there was any use in replying to it at all.

23 Q. Were you afterwards tendered the interest on the pur-
24 chase price named in the deed?

25 A. No, sir; nobody had offered me any interest until the
26 25th day of June. Mr. Gay came, but I had never met Mr. Gay

J.K.Holland

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1 before, and he said he had some papers, and wanted to pay
2 me some interest, and I asked him what, and he said on some
3 lumber I had sold to Mr. A.A.Holland, and I told him I had
4 sold him some in 1903.

5 Q. Did Mr. Cramer, at that time, offer to pay you any
6 interest money?

7 A. The 25th of June he came and
8 offered it, and I told him I did not think there was any
9 interest coming, that the time had run out over twelve months,
10 and I did not think there was anything else on the lumber,
11 and I thought the lumber belonged to me.

12 Q. You knew in the early part of March that Mr. Cramer
13 claimed an extension on your lumber?

14 A. Yes, sir.

15 Q. At that time he tried to negotiate for an additional
16 three years?

17 A. Yes, sir, you wrote the
18 letter, and on the 25th of June Mr. Gay came along, and I
19 refused to take it, as I would if you would offer it.

20 Q. This deed states the consideration is \$215; that is
21 right, is it?

22 A. Yes, sir.

23 Q. And the timber is to be cut down to twelve inches; is
24 that right?

25 A. Yes, sir.

26 Q. It also states that the timber was to be cut on the
following tracts: "Beginning at a certain pine tree at South
east corner of his home field fence, and running a straight
line along Dempsey Howell's line to George Brown and Axom
Holland lands, thence South course around Axom Holland's
fence to a dead pine, thence a straight line North to a green

1 pine on the avenue?"

A. Yes, sir.

2 Q. "Thence East down avenue and around fence to beginning?"

3 A. Yes, sir.

4 Q. "Containing all the land South of said avenue?"

5 A. Yes, sir.

6 Q. Is that right?

A. Yes, sir.

7 Q. In the next place it says "beginning at a certain crooked
8 pine (sliped at fence) about two hundred yards North of
9 avenue, and running a straight line to a sliped bay tree?"

10 A. It is not a straight line; it is not exactly a straight
11 line.

12 Q. "Thence a straight line South to a certain sliped holly
13 tree, thence same direction to a sliped sour wood near the
14 corner of a big ditch?" A. That is right.

15 Q. "Thence in a Northerly direction around Jack Jones and
16 J.R.Ellis and back to the corner of fence an Eastward course?"

17 A. That is right.

18 Q. Does that cover all the land you own there outside of
19 the clear land? A. No, sir.

20 Q. Where is the piece you excepted?

21 A. From the avenue to the pine and all on the back of the
22 field. There is not very much on the back, but what there
23 is is excepted.

24 Q. How many acres would you say there were in that excepted
25 piece?

26 A. I could not tell you. I
never had it surveyed, and don't know.

J.K.Holland

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- 1 Q. But this description, you say, does not include the piece
2 that was excepted? A. No, sir.
- 3 Q. You say you can't read or write?
4 A. No, sir, I certainly can't to amount to anything.
- 5 Q. You signed this? A. Yes, sir.
- 6 Q. You can read printing, can't you? A. No, sir, but
7 mighty little.
- 8 Q. You did not read the contract?
9 A. No, sir.
- 10 Q. Mr. Joyner read it to you?
11 A. Yes, sir.
- 12 Q. And you only know what was in it from what he read?
13 A. I only know what was in it from what he read.
- 14 Q. What time did you say Mr. Gus Holland was to have in which
15 to cut the timber? A. Two years to cut and re-
16 move the timber was all he asked for. I did not want to
17 give him but one, but he asked for two.
- 18 Q. Was he to have any extension? A. No, sir. I
19 never heard that mentioned.
- 20 Q. So the only time you gave him in which to cut the timber
21 was two years? A. Two years.
- 22 Q. How did Mr. Joyner read this clause: "And said parties
23 of the first part grant, accord and assure unto the party
24 of the second part the full term of three years in which to
25 remove the timber, said term to commence from the date of
26 this contract, and two years if needed by paying 6 per cent

1 interest on purchase price?"

2 A. That was never read to me, and it was not said anything
3 to me about it.

4 Q. It was not read to you by Mr. Joyner?

5 A. No, sir. If I was on my dying oath I would swear to it.

6 Q. Nothing was said about extension?

7 A. No, sir.

8 Q. And you never agreed to it? A. No, sir, and I
9 refused to take the interest because I thought that the
10 lumber was mine, and Mr. Gay will tell you what I told him
11 when he came up there.

12 Q. Now, you said you heard last fall that the time within
13 which they had to cut it was five years?

14 A. Yes, sir.

15 Q. Who did you hear it through? A. I don't re-
16 collect.

17 Q. What time was it you heard it? A. I don't recollect,
18 but sometime just about Christmas, or before Christmas.

19 Q. You knew the timber had been sold at that time?

20 A. No, sir, I did not know it had been sold.

21 Q. Did not you know that the timber had been sold to
22 Crocker & Brother? A. No, sir.

23 Q. And afterwards it was sold to the Cramer Company?

24 A. No, sir.

25 Q. You did not inquire of Mr. Holland whether or not it had
26 been sold? A. Nothing except I went to see

1 him, and asked him if he did not think the time was out, and
2 he made the remark that he rather thought it was out, that he
3 knew I would not give him as long time as the others, and he
4 referred me to the record. He said he rather thought my
5 time was out, that he knew I would not give as long time as
6 the rest of them, and that he could not get me down to it.

7 Q. And you state positively the only time you gave him was
8 two years?

9 A. Yes, sir. If I was on my
10 dying oath that is what I would tell him, or anybody else.

11 Q. And no extension?

A. No, sir.

12 Q. You signed and acknowledged this deed before Mr. Joyner?

13 A. Yes, sir; I do not deny anything I did.

14 Q. Who was present when the deed was drawn?

15 A. No one was there until my wife came in, and she could
16 not write her own name, and Mr. Joyner wrote her name, and she
17 touched the pen.

18 Q. So at the time the contract was made the only persons
19 present were you and Mr. Joyner and Mr. Holland?

20 A. Yes, sir; the children were out there.

21 Q. Mr. Holland told Mr. Joyner what to write, and Mr. Joyner
22 wrote it?

A. Yes, sir.

23 Q. What did Mr. Holland tell Mr. Joyner to write about the
24 time?

25 A. He told him to write down two years
26 from date, and if not cut and removed in two years the lumber
would be mine back. That is all he told him about the time.
He expected to put a mill up there to cut the lumber right away.

1 and he wanted two years as probably he might not get to it in
2 twelve months.

3 This witness testified as to the amount of
4 timber on each tract - also says Hollage
5 told him that Tony Holland would not
6 JOSEPH F. HOLLAND, being duly sworn, testified as

7 follows:

8 Examined by Mr. Withers:

9 Q. State your name, age, residence and occupation, and if
10 you know the parties to this suit?

11 A. Name is Joseph F. Holland; age forty-six; residence
12 Holland; occupation farming; I know the parties to this suit.

13 Q. Are you the same Joseph F. Holland who made the es-
14 timates of timber on some of the lands of the parties to
15 this suit?

16 A. Yes, sir.

17 Q. I herewith exhibit K, and ask if this is your es-
18 timate of the timber on the J.K.Holland tract?

19 A. Yes, sir.

20 Q. I notice here that you have in figures twenty thousand
21 feet?

22 A. Two hundred thousand feet.

23 Q. Then you should add one more naught.

24 A. Yes, sir, it ought to be there.

25 Q. It reads twenty thousand feet at \$3.50 per thousand,
26 amounting to \$700?

27 A. I made a mistake.

28 Q. You meant it two hundred thousand?

29 A. Yes, sir, that is what I put it there for. I just did

just this is much more as the others

1 not carry out the naught.

2 Q. Whose else timber did you estimate?

3 A. I estimated a good many pieces.

4 Q. I mean for these parties? A. Mr. Milteer,
5 Anthony Holland, Frank Gordon, Hare, and Everett, besides
6 Mr. Holland.

7 Q. I now hand you a paper marked exhibit L, which purports
8 to be signed by you, an estimate for D.H. Milteer, four hundred
9 and seventy-five thousand feet at \$3.00 per thousand, making
10 \$1425; is that your estimate? A. Yes, sir.

11 Q. Please state what you found on the Anthony Holland tract?
12 A. Fifty thousand.

13 Q. What was it worth per thousand? A. \$3.00.

14 Q. That would make \$150? A. Yes, sir.

15 Q. Please state if you examined Frank Gordon's tract, and
16 if so, what you found? A. I did; I found two
17 hundred and five thousand.

18 Q. At what figure? A. \$3.00 at that time.

19 Q. That amounts to \$615? A. Yes, sir.

20 Q. Did you examine the tract known as the Hare and Everett
21 tract? A. Yes, sir.

22 Q. What did you find? A. One hundred and ninety
23 thousand feet.

24 Q. At what rate? A. \$3.00.

25 Q. That amounted to \$570? A. Yes, sir.

26 Q. Please state if you had a conversation with Mr. A.A.

D. S. PHLEGAR
SHORTHAND REPORTER
NORFOLK, VA.

D. S. PHLEGAR
SHORTHAND REPORTER
NORFOLK, VA.

Joseph Holland.

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1 Holland with regard to how long a time he had in which to cut
2 the timber from the land of J.K.Holland, and, if so, what
3 he said? A. Yes, sir, there was some talk
4 between us, I hate to have anything to say about it, or
5 anything to do with it, but as I am in it I must tell it.
6 On the day that Uncle Anthony Holland and Mr. Tony Holland
7 went to see Mr. Gus Holland I was on the side of the road
8 at work, and they come along where I was, and they told me
9 their business, they were going to see Mr. Gus Holland about
10 that lumber. I told them when they come back to come back
11 where I was. They were going to take the boggy track to the
12 mill, and Mr. Gus Holland was cutting my lumber at that
13 time, and they thought he would be at the mill, and to come
14 back and let me know what Gus said. They failed to come back
15 that way, so I didn't see them. The next time I saw Mr.
16 Gus Holland I reckon he was at home - I think it was the
17 first time. Anyhow, I saw him there. I made no note how
18 long it was, but supposed to be the next Saturday I was at
19 his house. The question came up, I don't know how; I might
20 have asked how he and the boys were getting along over the
21 timber, and how did they make it. He said Tony and Anthony were
22 to see him a day or so ago, and he told Tony that he rather
23 thought his time was out, and he made some more remarks about
24 the lumber, and maybe about some other. I think it would
25 be well to tell it all. He did say some other words, but
26 not concerning Tony Holland, but what he said about other

parties that he bought from, and that was that he heard that a whole lot of them had a whole lot to say, and he was surprised at it, and he called one of their names, a gentleman in here yesterday, and if you think it necessary I will call his name. It was Mr. John Rawles, and he said he was surprised at him, that he was a man who had good sense, and a good education, and knew what business was. Mr. Holland said to him own knowing Mr. Rawles read his own contract, and he heard more that he had to say about it than anyone else. That was about the conversation that passed between us.

Q. Then Mr. Holland at that time said --

A. I was not picking Mr. Holland for anything to tell.

Q. Then Mr. Holland, at that time, stated to you that he rather thought Tony's time was out?

A. Yes, sir, he said he told Tony that he thought it was out.

Q. Did Gus Holland say at that time that he thought he only had two years on the Tony Holland tracts?

BY MR. BURGESS: Objected to as leading.

A. He said Tony somehow would not agree to give as much time as the rest.

By Mr. Withers:

Q. This conversation occurred, as I understand it, some time last winter?

A. Yes, sir. I did not make any note of it, but I would suppose it to be the last of February, or the first of March.

Q. Of this year?

A. Yes, sir, that was this

1 year.

2 Q. Now, Mr. Holland, for how long have you been estimating
3 timber?

4 A. I was raised in here, and
5 served in it for seven years when I was a youngster, and
6 then out of it, and then farming, and by some means they got
7 me back into it in the last year or so, and if there is any
8 gentlemen around the stand that is dissatisfied with any
9 work I have done, or any of my estimation, I am prepared to
10 show whether I am prepared to do the work, or not.

11 Q. How much experience have you had in estimating timber?

12 A. I have had a great deal this year, and for the last few
13 years, excusing the seven years I had I have not had so
14 much up until the last year or two. I do not claim to have
15 ever forgotten the business along that line.

16 Q. Then you worked at this business for seven years?

17 A. Yes, sir.

18 Q. And stopped and went to farming? A. Yes, sir.

19 Q. And for the last two years you have been estimating
20 again? A. Yes, sir.

21 CROSS EXAMINATION

22 By Mr. Burgess:

23 Q. During the seven years you were engaged in the lumber
24 business, what was your occupation? A. Saw milling.--
25 not for myself, but with a man who was milling, and carried
26 me everywhere he went.

- 1 Q. What services did you perform for him?
- 2 A. Anything he wanted; I cooked a part of the time, and did
- 3 anything he wanted.
- 4 Q. Who was this man? A. Captain Dosh Duke.
- 5 Q. Where was the mill located? A. We worked from
- 6 half way to Suffolk to near Holland, and logged a good many
- 7 different places.
- 8 Q. What years were they? A. So far as the dates
- 9 I could not tell.
- 10 Q. About how old were you? A. I was a young man,
- 11 you might say. I might say I commenced the business about
- 12 18 or 20.
- 13 Q. About what was the capacity of this mill?
- 14 A. It was small, and only cut about an average of 8,000. It
- 15 was not rigged as the mills they have now.
- 16 Q. You were with him for seven years?
- 17 A. Yes, sir.
- 18 Q. Then you went out of the business, as I understand?
- 19 A. Yes, sir.
- 20 Q. How long did you stay out of the business before you
- 21 went back to estimating? A. I have not kept any
- 22 record.
- 23 Q. About how long? Come within two or three years of it?
- 24 A. At least twenty years, or probably a little longer; maybe
- 25 not as long as that. I do not reckon I have been out as long
- 26 as that. I could not say for certain.

1 Q. About how many feet of lumber is there in a tree eighteen
2 inches in diameter across the stump, which will cut three logs
3 sixteen feet each? A. That is easy enough done
4 by a pencil and working it out.

5 Q. Would you mind doing it? A. I guess I could
6 do it.

7 Q. Will you please take this piece of paper and this pencil
8 and make the calculation? A. Well, my brother,
9 suppose we got at it in a little plainer way. Suppose you
10 allow me to show on the stand whether I can do it personally.
11 There is a man in this room, one of your own men.

12 Q. I prefer that you make the calculation?

13 A. I prefer one of your own men telling, and I think it
14 would be better.

15 Q. Then, if I understand you, you prefer not making the
16 calculation? A. I do not feel like it.

17 Q. Do I understand you decline to make the calculation?

18 A. I do not mean to say that I am an expert on it, but I
19 do claim I can go on any man's piece of woods, and can come
20 as near telling what is in there as any man in this section, and
21 I say I am prepared to prove that. I will do it with one of
22 your own men.

23 Q. Will you tell me the number of feet of timber, in a log
24 fifteen inches in diameter across the butt, sixteen feet long.

25 BY MR. WITHERS: The question is excepted to on the
26 ground that the witness does not pretend to be a

1 scaler of logs, but one capable of estimating
2 standing timber.

3 A. I do not pretend to say I can go on the yard and scale
4 logs, but I have done it.

5 By Mr. Burgess:

6 Q. Can you make that calculation?

7 A. I think I can.

8 BY MR. WITHERS: The question is exerted to.

9 By Mr. Burgess:

10 Q. How many feet of timber is there on an acre of land
11 which has 150 trees measuring between 16 and 18 in diameter
12 across the stump, and from which trees three cuts sixteen
13 feet long can be obtained? A. I have never been
14 off to guess at things, but it looks more like guess work,
15 but I guess more by putting my eye on a thing.

16 Q. How do you estimate the number of feet on an acre, or
17 on a tract of land? A. It is done by practice
18 more than anything, in getting to be perfect.

19 Q. How do you get the practice? A. From work-
20 ing until you find out that you have it, and experimenting.

21 Q. How do you work until you find you get it?

22 A. You buy and cut until you find out what you are doing.

23 Q. If I understand you, you have not been in the saw mill
24 business for about twenty years? A. No, sir.

25 Q. Then, while you have estimated, you have not verified
26 your estimate by cutting? A. It has been cut behind

1 me. There are men here who have used the rule behind me.

2 Q. You would not like then to make an estimate on the
3 amount of timber that an acre of land, with the number of
4 trees on it that I have mentioned, of the dimensions mentioned,
5 would cut?

6 A. It depends greatly on the shape
7 of the trees, and whether they are crooked.

8 Q. Assume that they are all straight trees, and will cut
9 the maximum amount of lumber that a straight log will cut?

10 A. That is easy enough done if you get all the trees there
11 the same size.

12 Q. We will assume that they are 18 inches?

13 A. All about 18 inches?

14 Q. Yes? A. Each log?

15 Q. All three logs to be 18 inches.

16 A. It would be one of the easiest things you ever did in
17 your life to work it.

18 Q. But, as I understand you, you do not care to do it?

19 A. No, sir, I am not really prepared to. I do not feel
20 like doing it.

21 Q. Do you decline to do it? A. I do not feel like
22 doing it. I can do it.

23 Q. Will you do it? A. I will do it during
24 the day, and will go out and sit down a few minutes.

25 Q. Will you give me an estimate of what it is?

26 A. I say I will do it during the day. If you will let me
just make a note of the quantity and the size, and so on.

Q. Do you mean to tell me that you have to take time off to think and figure to make an estimate on a proposition of that kind?

A. No, sir, I do not do that; I do not take a pencil and put down every tree, and I do not go into the woods, and count every tree. If I did, I would not get rich at it.

Q. That is what I am trying to get at. When you walk through a piece of woods, you pick out a tract of land and estimate the amount of land, the number of trees on it, the class of trees, whether they are straight, and what they will cut, and estimate about the number of trees, and in that way you form an estimate of what you think the tract will cut. It may be a large tract, and you estimate three or four small tracts together. That is all I want you to do on this acre of land?

A. We have not the acres to try to do it. If a man known anything about lumber he has to cut it. I claim when I go into a piece of woods if I find the acres I can get close to it how much lumber there is on it, if I know the acres, and whether I can do that; that is what I have offered to show here by one of your own men.

Q. But you will not tell me about how much timber there is on an acre?

A. I say I will tell you if you insist on it later in the day.

Q. But you will not make a rough estimate now?

A. I do not want to guess at it like if I was looking at

1 the trees. I am used to looking at trees, and not papers.

2 Q. Let us take up the land of James K. Holland. How many
3 acres of timber land did you look over?

4 A. I did not try to get the number of acres, but I expect
5 I come nearer knowing than anybody in the house than Mr.
6 Holland.

7 Q. Well, how many acres? A. I helped to survey
8 it.

9 Q. I do not want to prolong the examination. If you
10 answer the questions precisely we will get through. About
11 how many acres of timber land did you estimate?

12 A. There is one of the pieces I don't recollect. It is
13 in two pieces. On each side of the piece he reserved, and
14 one of the pieces I don't recollect exactly, and can't
15 answer your question.

16 Q. How thick was the timber? What was the thickest timber?

17 A. Some very good and thick, and some medium and open.

18 Q. This good and thick, what would it cut per acre?

19 A. Fifty-five hundred, and probably some 6,000 to the
20 acre.

21 Q. How many acres were there that would cut about that
22 much?

23 A. I could not tell you without
24 looking at the land. I did not make a note of it.

25 Q. What percentage of it was good, and what percentage
26 was bad?

A. The part that we estimated was
good lumber. The worthless lumber we did not estimate.

Q. How many acres would cut fifty-five hundred?

A. We did not make a note of it. Some places that they did not cut the best that is good now.

Q. That land has been cut over, hasn't it?

A. In time.

Q. What is the usual size of the trees?

A. Different sizes. I found some first growth on that land.

Q. What percentage was first growth?

A. I could not tell you. I made no note of that.

Q. What percentage of trees were over twenty-six inches?

A. I could not tell you that, brother. When you get them up to twenty-six inches you are getting up towards the biggest, but there are some larger.

Q. Well, the average trees were about how much in diameter?

A. I could not give you that. I did not make a note of it. It would take more time to give the number of trees.

Q. Assuming the trees are 18 inches in diameter, how much will that tree, on land like Mr. Holland's, grow in a year?

A. It depends altogether upon the land, and altogether on what is surrounding the tree. If the other lumber has been cleaned off around it, it will grow, but that size tree don't grow as fast as a tree of ten or twelve inches.

Q. How much do you think the average timber Mr. J.K.Holland owned grew in three years?

A. I had not been over it before looking over the timber. When I was there before I was helping to survey the land.

1 Q. How much? You saw the condition and the trees?
2 A. It is in a flourishing condition, and is growing.
3 Q. How much will it grow a year? A. I don't know.
4 Q. Will it grow as much as two inches in diameter a year?
5 A. No, sir.
6 Q. Will it grow as much as an inch? A. Not hardly.
7 Q. Will it grow as much as half an inch?
8 A. Yes, sir.
9 Q. Do you think that timber, as a general thing, would grow
10 as much on an average, the average timber, I mean, as an
11 inch in two years? A. Mighty near it. It
12 depends altogether on the thickness of the timber.
13 Q. I am talking about J.K.Holland's?
14 A. Some places it is better than at others.
15 Q. How thick is the average? A. I did not make
16 any note of that.
17 Q. If that lumber would estimate two hundred thousand feet
18 the day you were there, how much would it estimate - of
19 course I do not want you to tell me in ten dollars or fifty
20 dollars - how much would it estimate in two years before
21 that? A. Do you mean the quantity
22 of it?
23 Q. Yes? A. I can't tell you that, because
24 I did not look at the lumber at that time, two years before.
25 Q. How does the grade of that lumber compare with the
26 grade of the other lumber around there?

1 A. It is fair.

2 Q. How is the grade of Anthony Holland's?

3 A. It is fair. It is a larger lumber.

4 Q. How is the grade of John F. Rawles?

5 A. I have not been in there.

6 Q. How is the grade of Mr. Milteer's? A. Fair. It
7 is thick and small.

8 Q. Which is the best, Mr. Holland's or Mr. Milteer's?

9 A. Mr. Holland's is somewhat the best grade of lumber.

10 Q. Do you mean Mr. J.K.Holland? A. Yes, sir.
11 It is all sap lumber.

12 Q. Who set these prices? A. I did it.

13 Q. You say you had a conversation with Mr. Gus Holland?

14 A. Yes, sir.

15 Q. He said, as I understood it, that he had heard more
16 from Mr. John F. Rawles? A. Yes, sir.

17 Q. That Mr. John F. Rawles was an educated man, and read
18 his contract; did he say that the others did not read theirs?

19 A. He did not say.

20 Q. Did he mention anybody else's name?

21 A. No, sir, not in speaking of Mr. Rawles. He had been
22 speaking of Mr. Tony Holland, and Uncle Anthony. He spoke
23 of Mr. Tony Holland coming there and telling him that he
24 thought the time was out, and he would not give him as much
25 time as the rest.

26 Q. With the exception of John F. Rawles and Mr. Tony Holland

1 he did not call other names?

2 A. No, sir, he said Mr. Tony Holland would not agree to
3 give as much time as the rest of them.

4 Q. You live out in that neighborhood, don't you?

5 A. Yes, sir.

6 Q. When did you first hear of this trouble?

7 A. I could not tell you.

8 Q. It has been current talk around there?

9 A. Yes, sir, but I don't know how long I have heard it.

10 Q. About how long? You can come in a month or two?

11 A. I don't know, but I have heard it, and anybody else
12 around who comes here have heard it. It has been pretty
13 breezy around there.

14 Q. Can you come within six months of it?

15 A. It looks like I might, but I am afraid to say.

16 Q. Will not you make an estimate of about the first time
17 you heard it? A. I don't think I could.

18 Q. Was it five years ago the first time you heard of it?

19 A. No, sir.

20 Q. Was it four years ago? A. No, sir.

21 Q. Was it three years ago? A. No, sir.

22 Q. Was it two years ago? A. You are getting
23 so close on me, and I could not answer the question, and
24 so I am telling you the truth, because I don't know exactly.

25 Q. Was it eighteen months ago?

26 A. I could not answer your question, brother, because I

Joseph F. Holland

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1 did not make any note.

2 Q. Was it before yesterday?
3 was before yesterday.

A. It certainly

4 This includes belief that she did not

5 sign the deed. No other material testimony

6 EMMA HARE, (Colored), being duly sworn, testified

7 as follows:

8 Examined by Mr. Withers:

9 Q. State your name, age, residence and occupation, and if
10 you know the parties to this suit?

11 A. Emma Hare; age thirty-eight; near Holland; farming.

12 Q. Do you know the parties to this suit?

13 A. I know what my husband told me.

14 Q. Are you the wife of E.T.Hare?

15 A. Yes, sir.

16 Q. E.T.Hare testified that in March, 1903, you were sick
17 at home? A. Yes, sir.

18 Q. Is this correct? A. Yes, sir.

19 Q. He also testified that he did not sign this contract
20 which I now show you, being the original deed purporting to
21 be from Elisha T. Hare and Emma Hare to J.D.Crocker &
22 Brother; did you sign your name to this paper?

23 A. No, sir.

24 Q. Is that your signature? A. No, sir,
25 it is not mine, because I never seen it before.
26

1 Q. Do you solemnly swear you never signed this paper?

2 A. Yes, sir.

3 Q. Where were you on the 21st of March, 1903?

4 A. I was at home where I was all the year.

5 Q. Did Mr. Elihu Joyner come to your house with a paper
6 for you to sign that day?

7 A. No, sir, that
8 day nor any other day.

9 Q. Did you go to Mr. Elihu Joyner's to sign a paper that
10 day, or any other day?

11 A. No, sir, I never
12 went there during the year.

13 Q. Will you please sign your name to the paper with this
14 pencil?

NOTE: The witness does so on paper marked Exhibit

M. The circle around "re" was made by Mr. Burgess.

15 Q. Is that the way you sign your name generally?

16 A. Yes, sir. I never have no signing to do.

17 Q. Do you sign it that way everytime you do sign it?

18 A. I may put in a middle letter sometimes. I have signed
19 two papers since I have been married.

20 Q. What is your middle name? A. Adeline.

21 Q. I mean is that your regular handwriting?

22 A. Yes, sir.

23 Q. You say you signed two papers since you were married;
24 what were they?

25 A. When we bought this Jim
26 Everett land I signed a paper, and I signed a paper some
business between my husband and Mr. Britton Edwards.

Q. They were two deeds of trust or mortgages?

A. Yes, sir, something like that.

Q. And you have not signed any other papers since you have been married?

A. No, sir, no more then when we were buying the land.

Q. And when you were buying the land you signed the two papers you just spoke of?

A. No, sir. I have not signed but two papers since I was married, excusing when we were buying the land.

Q. When were you buying the land?

A. It has been quite a while, and I cant tell now.

Q. About how many years ago was it?

A. I can't readily say. It might have been somewhere about five years - four or five years since we bought.

Q. Who did you buy from?

A. Bought it from Mr. Elihu Joyner, I think.

Q. What paper did you sign then?

A. I don't know, sir, but it was the paper, the deed of trust, I reckon, but I don't know what I signed. I signed it before Mr. William T. Holland died, because I went to his house to sign it.

Q. To sign it before him?

A. Yes, sir.

Q. Whatever you signed was a paper agreeing to pay the money for the farm?

A. Yes, sir.

Q. How long have you been married?

A. Going on twenty-four years.

Emma Hare

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- 1 Q.. How many children have you? A. Six.
- 2 Q. Which child was a baby when you bought the farm from
- 3 Mr. Joyner? A. The third child.
- 4 Q. What is its name? A. Elisha T. Hare.
- 5 Q. How old is Elisha now? A. He was a baby, but
- 6 there is right smart difference in my children's ages. He
- 7 is some twelve years old. My first children, there is a
- 8 difference between their ages.
- 9 Q. He is about twelve years old now, and how old was he
- 10 when you bought the farm from Mr. Joyner?
- 11 A. Five or six, or somewhere along there.
- 12 Q. How old is your next child now?
- 13 A. The next to him?
- 14 Q. The next to him? A. Five years old.
- 15 Q. Was that baby born before or after you bought the farm?
- 16 A. Born afterwards.
- 17 Q. Was he born on the farm? A. We ain't never
- 18 moved on there. We don't live on the farm, but we are
- 19 expecting to build on there.
- 20 Q. But the child that is now five years old was born after
- 21 you bought the farm from Mr. Joyner?
- 22 A. Yes, sir.
- 23 Q. And after you signed that paper?
- 24 A. No, sir. Which paper - when we bought the land?
- 25 Q. Yes?
- 26 A. Yes, sir, he was born after then.

Emma Hare

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1 Q. How old is your next child? A. Three years old.

2 Q. When is its birthday? A. Its birthday has done
3 been.

4 Q. What month? A. May.

5 Q. What day? A. It was the eight.

CROSS EXAMINATION

8 By Mr. Burgess:

9 Q. What is your child's name? A. Rosina.

10 Q. Write on this piece of paper I give you "Emma Hare"?
11

12 NOTE: This is written on the back of paper marked
13 exhibit M.

14 Q. Will you take a pen and write "Emma Hare"?
15

16 NOTE: This is written on the same piece as that
17 last above referred to, which is marked exhibit M.

18 A. I can't write with ink?

19 Q. Will you please take a pencil and write as I spell "H-e-
20 n-r-y"? Write that down there.

21 NOTE: This is written on the same paper, marked
22 exhibit M.

23 Q. Now, write "R-e-m-n-a-n-t"?
24

25 NOTE: This is written on the same piece of paper
26 marked exhibit M.

Q. What day was your last child born - what day of the
month? A. I have not told you yet.

Q. If you had I would not have asked you.

1 A. I thought you were speaking of the one I told you about a
2 while ago. I didn't know you knew I had any other.

3 Q. What day of the month was your last child born?

4 A. The last child was born the twentieth something -

5 Q. Twentieth something? A. I will not say
6 whether it was the 23rd or 25th of January.

7 Q. What day of the month was your first child born?

8 A. The first day of April.

9 Q. What day of the month was your second child born?

10 A. The second child was born the 21st, I think, of July.

11 Q. What year? A. I don't remember what year.

12 Q. What day of the month was your third child born?

13 A. Born the 23rd of September.

14 Q. What year? A. I disremember what year.

15 Q. You heard your husband's testimony, didn't you?

16 A. I guess so.

17 Q. You were sitting near him in the room, were you not?

18 A. Yes, sir.

19 Q. You agree with everything he said, don't you?

20 A. No, sir, because he disremembered. There are not many
21 men that keep times of children's ages like the mother.

22 Q. What else did he "disremember"?

23 A. You taken a note of it, and you ought to know better than
24 I do, because I did not take any note.

25 Q. What other statement did he make with which you did not
26 agree? A. All the statements you have

1 here that we didn't know anything about, and he didn't neither.

2 Q. Did you ever hear him mention, in the year 1903, the fact
3 that he had sold any timber to Mr. Gus Holland?

4 A. He told me that he had bargained to sell his timber to
5 Mr. Holland, or was about to bargain. He spoke to me before-
6 hand, before he bargained, and he told me that Mr. Gussie offered
7 him \$50 and some trees to build with. I asked how long a time
8 was he going to cut in, and he told me three years. I told him
9 well, if he would cut our timber first to build, which we needed
10 a house, that it was alright.

11 Q. Did you tell your husband not to grant a longer time than
12 three years?

13 A. I had not heard nothing about
14 granting it, and I could not tell him nothing about it.

15 Q. Are you sure your husband told you that he was to have three
16 years to cut it?

17 A. Yes, sir, I am sure.
18 That is all I have ever heard.

19 Q. You heard your husband say that he went to Portsmouth
20 some time in March?

21 A. I know that he went.

22 Q. You heard him say it?

23 A. Yes, sir.

24 Q. Do you know what time in March he went?

25 A. No, sir, I was not taking any particular notice, but I
26 know it was some time in March. Probably by studying back I
could come close to it. I know I was sick at the time, and he
had to go away, and he asked my brother-in-law to notice around
until he came back.

Q. Might it not have been the first week in April?

1 A. I have done told you it was March.

2 Q. You know it was in March?

A. Yes, sir.

3 Q. You are ready to swear positively it was in March?

4 A. Yes, sir.

5 Q. And you are ready to swear it was because you were sick?

6 A. Yes, sir.

7 Q. Your child was not born until May?

A. No, sir.

8 Q. Was it the 21st day of March that he was gone?

9 A. I could not tell you. I know that he was gone.

10 Q. Was it the 25th day of March?

11 A. I told you a while ago I did not notice, but I know it
12 was sometime in March that he went. If I had thought it
13 would be brought up I could have taken more notice.

14 Q. If you never took any notice, how can you swear it was
15 not the 2nd day of April?

A. I know that April

16 had not come in.

17 Q. What made you know that April had come in?

18 A. It had not come in.

19 Q. What day of the month is to-day?

A. It is

20 about the 21st.

21 Q. What month?

A. September, I reckon. That
22 is what it is printed to be.

23 Q. Has your husband been to Portsmouth since that time?

24 A. No, sir. He has been speaking about going, but he has
25 not been.

26 Q. Has he been off anywhere and stayed as much as three days

- 1 since that time? A. No, sir.
- 2 Q. Has he been off anywhere and stayed as much as three days
- 3 since that time? A. No, sir.
- 4 Q. Has he been off anywhere and stayed as much as two days?
- 5 A. He has been off a day.
- 6 Q. Where did he go? A. That is his business
- 7 and mine. I don't know that I have any business to tell you
- 8 everywhere he went.
- 9 Q. You do not want to tell, do you? A. That aint
- 10 what we were talking about.
- 11 Q. You do not want to tell anything but what you have to tell,
- 12 do you, auntie? A. I want to tell what is
- 13 right, or what I think is right.
- 14 Q. And you want to be the judge of what is right, and what
- 15 you ought to tell, and you aint going to answer any questions
- 16 unless you think it is right to answer?
- 17 A. I will answer it as I know, and I will answer what I think
- 18 is right.
- 19 Q. And you are going to still swear that your husband went
- 20 away during the month of March, and came back home during the
- 21 month of March, 1903? A. Well, if he had not
- 22 come back he would not have been here now.
- 23 Q. He could have come back in April?
- 24 A. You said if he hadn't come back.
- 25 Q. You think you are pretty smart, don't you?
- 26 A. No, sir.

1 Q. You are trying to impress these people that way?

2 A. No, sir.

3 Q. Why don't you answer this question?

4 A. Because you cross question me so.

5 Q. You are willing to swear it was in the month of March
6 when your husband left home to go to Portsmouth, and it was
7 in the month of March when he came back? A. Yes, sir.

8 Q. And your reason for saying that is that you were sick,
9 and told your brother-in-law to look around the house?

10 A. To notice around for fear I might get sick.

11 Q. How long did your husband stay?

12 A. He stayed about a week, but I don't remember what day he
13 came back.

14 -----ooOoo-----

15
16
17 J. FRANK GORDON, (colored), being duly sworn, testified
18 as follows:

19 Examined by Mr. Withers:

20 Q. State your name, age, residence and occupation, and if
21 you know the parties to this suit?

22 A. Joseph Frank Gordon; age thirty-five; near Holland;
23 occupation farming; I know the parties to this suit.

24 Q. Did you, in February, 1903, own a tract of land near Holland
25 that you now live on? A. Yes, sir.

26 Q. Did you bargain with Mr. Gus Holland to sell him the

1 timber from that land at that time? A. Yes, sir.
2 I did. At the time I bargained to sell him the timber on the
3 land was 1903.

4 Q. Is that the same line of timber that he bought from you
5 and your neighbors? A. Yes, sir.

6 Q. Please state in your own way what your bargain with Mr.
7 Holland was for the sale of this timber.

8 BY MR. BURGESS: The question and any answer that
9 may be given thereto are objected to on the ground
10 that the witness is not a party to this suit, and
11 that the question seeks to elicit information about
12 a separate and distinct transaction, and any answer that
13 may be given thereto will be immaterial and irrelevant.

14 A. I sold my timber to Mr. Holland for three years. He had
15 come down there to see me about my timber, and he was just over
16 there from Brother Jackson, and he told me that he had bought
17 his and all around me, and he wanted mine, because mine was in
18 the middle, and he wanted to put the mill upon mine because it
19 was in the center of the timber. Me and him could not directly
20 agree on the bargain at first, on the price, but we did agree,
21 and when we agreed I said "How long do you want to cut this
22 timber in", and he said "I want three years; I have three years
23 on Jackson and the rest of them, and I want three years". I said
24 "I don't want to give you three years to cut my timber in, be-
25 cause I have some land to clean up, and I want the timber out of
26 the way." He said "I am going to put the mill right here on

1 your place", and he pointed out the place he wanted to put it,
2 right in front of my gate, and he said, "I will cut yours for
3 the first time, and I am going to fell the timber in here be-
4 tween this and March", and I said "if you do that I will give
5 you three years to cut it, but I hope you will not let the
6 lumber stay here that long, because I want it out of my way
7 so I can clean up", and he says "I will insure you I will be
8 here between now and the first of March, and I will cut yours
9 first". I said "I will sign up". He came with the contract -
10 By Mr. Withers:

11 Q. Who came with him? A. Mr. Elihu Joyner. The
12 morning he came I lost my child, and I was getting ready to
13 go away, and he came in the back door, and I was fixing for him
14 to sit down, and he said "I haven't time, I am in a big hurry,
15 too", and Mr. Elihu Joyner had the contract, and he said "I
16 come here this morning to see you concerning the contracts and
17 I want to get around to-day, and get them signed if possible",
18 and I said "all right". When Mr. Elihu Joyner handed me the
19 contract, I attempted to open the contract to look at it. I
20 said to myself "what is all this contract". He said "it is
21 nothing more than our agreement as we agreed, three years in
22 which I am to cut and remove the timber".

23 Q. Who said that? A. Mr. Holland. I said
24 "if that is all, and you are in a big hurry, and I am in a
25 big hurry, I will sign it," and I was going to get a coffin
26 for my baby, and I signed on the ground that he stated it was

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1 not but for three years. Then Mr. Elihu said to me "your wife
2 will have to sign right down here". He took it and handed it
3 to her, and she really objected at first, and went on to make
4 a statement that she had promised not to sign any more papers
5 concerning the land. Mr. Gussie Holland said to her "that it
6 is nothing more than to show that I bought Frank's timber, and
7 in case he would die, or anything of that kind, I am to have
8 three years in which to cut and remove this timber", and I told
9 her that was all, and she signed in the testimony I have given
10 her, and as far as the two more years, I don't know anything
11 about it except I found it at the Clerk's Office and the rumors
12 in the neighborhood.

13 Q. You say you asked Mr. Holland what was in the contract?

14 A. Yes, sir.

15 Q. He said it was giving him the right to cut the timber at
16 any time in three years?

17 A. It was nothing
18 more than the bargain that he was to cut and remove the timber
19 in three years, and I said "I will sign it so as to release
20 you, and I can go and attend to my business, and you can go
21 ahead", and I signed it relying on him.

22 Q. Relying on what he stated?

23 A. Yes, sir,
24 what he said as our bargain was.

25 Q. Can you read?

26 A. I am not an expert
reader. I can spell as fast as I can read - what I mean is
I have to half read and half spell.

Q. How much did you go to school?

1 A. I didn't go much. I was a small boy, and when I got
2 big enough to go to work they put me to work, and I have not
3 been of much consequence.

4 Q. You say your child was dead that day, and you were in a
5 hurry to get a coffin? A. Yes, sir.

6 Q. And Mr. Holland was in a hurry to get the contract
7 signed? A. Yes, sir.

8 Q. Everybody was signing? A. Yes, sir, he wanted
9 me to sign so he could get all the contracts signed that
10 day.

11 Q. When did you first hear that the owner of this timber
12 had five years in which to cut it?

13 A. When I received a letter from Mr. Holland stating
14 that the lumber I sold Mr. A.A. Holland, that he had three
15 years in which to cut and remove it, with the privilege
16 of two more extended by paying 6 per cent, and wanted three
17 additional years by compensating, or something like that
18 on there.

19 Q. You had not heard of any rumor before that about the
20 land? A. Yes, sir, but I did not know it

21 to be a fact. I heard that they had two more years ex-
22 tended, and I did not know it was a fact until I come to
23 the record and found it there.

24 Q. You just heard it rumored around the country that they
25 were claiming that? A. Yes, sir.

26 Q. When did you go to the Clerk's Office?

1 A. I come to the Clerk's Office, I don't remember the
2 time, but in the spring sometime.
3 Q. Of what year? A. Of this year.
4 Q. Was it before or after February that you came to the
5 Clerk's Office? A. I don't remember
6 whether it was before or after February. Let me see: I
7 came to the Clerk's Office I think it was in February, or
8 along in March, or it may be before that time, but some
9 where along there.
10 Q. Who read the contract from the record?
11 A. Mr. Gomer.
12 Q. How did the contract read there?
13 A. It read, as near as I can state it, that he had three
14 years in which to cut and remove, and two more years ex-
15 tended by paying 6 per cent on the principal and on the
16 present value.
17 Q. Were you surprised when you saw those words in there?
18 A. I certainly was.
19 Q. What did you do then? A. I goes back home and
20 speaks to the party that I heard, or some of them, and said
21 "it is certainly a fact on the record", and I said I was
22 certainly surprised, and I heard of it, and I went to see,
23 and it is certainly on the record. I talked it around
24 right smart, and spoke of some of the parties that went to
25 see Mr. Holland, and they stated that they had went and saw
26 him, and his testimony to them was if they wanted to see about

1 it to go to the record, and I said if that is all the
2 evidence he can give there is no necessity of my going back;
3 I have been.

4 Q. And that is the reason you did not go to Mr. Holland?

5 A. Yes, sir.

6 Q. Can you state what you got for this timber?

7 A. Yes, sir, I think I can: \$140 is what he paid me for it.

8 Q. What is that timber worth to-day?

9 A. It is estimated to be worth \$615, if my memory serves
10 me aright.

11 Q. State whether or not you are willing to return Mr.
12 Holland's money if he gives up all claim to the timber, and
13 before he cuts it?

14 A. Yes, sir, I am
15 willing to give him every copper he gave me for the timber
16 if he returns my timber back.

17 CROSS EXAMINATION

18 By Mr. Holland:

19 Q. As I understand you, you signed the deed?

20 A. Yes, sir.

21 Q. And your wife signed it? A. Yes, sir.

22 Q. You did not read it? A. No, sir.

23 Q. Nor did your wife read it? A. No, sir.

24 Q. Mr. Holland told you it was your agreement?

25 A. He told me "it was just like you and I agreed, and made
26 the bargain three years."

1 Q. And upon his statement that it was your agreement, you
2 signed it? A. He said it was just like you
3 and I agreed, three years.
4 Q. Was there anything said about three years?
5 A. When we agreed?
6 Q. Not when you agreed, but when you signed the deed?
7 A. Yes, sir.
8 Q. Did not you talk about the three years at the time you
9 made the agreement? A. I did talk about it
10 then. We were standing in front of Mr. Zackery Holland's
11 store.
12 Q. I understand you to say when he came to sign the deed,
13 both were in a hurry? A. Yes, sir, I was in
14 a hurry before he came.
15 Q. And Mr. Holland said it was like you agreed?
16 A. He said "it is just like you and I agreed, I have three
17 years to cut and remove the timber".
18 Q. And you swear that he made the statement about the
19 three years at the time he brought the deed?
20 A. Yes, sir.
21 Q. You say you gave him three years in which to cut and
22 move the timber? A. Yes, sir.
23 Q. But you did not agree to give him any additional time?
24 A. No, sir, he did not ask for it.
25 Q. Did not he say that he wanted three years in which to
26 out it, and if he wanted additional time he would pay for it?

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1 A. No, sir; the first time he got after me, he and I could
2 not agree, and when we made it it was at Mr. Zackery Holland's
3 store.

4 Q. Was it mentioned before? A. We did not
5 make but one bargain.

6 Q. Did not he tell you that he wanted three years, and if
7 he could not get it for --

8 A. That is all he said he wanted, three years.

9 Q. You would have given him the time if he had asked?

10 A. If he had asked probably I would have given it to him.

11 Q. If he had asked probably you would have given it to
12 him?

A. Yes, sir.

13 Q. It has been three years ago since this contract was
14 made?

A. Yes, sir.

15 Q. Is not it possible you could have forgotten about the
16 time actually given in which to cut the timber?

17 A. I did not forget it. I remember it mighty well.

18 Q. Did you keep it in your mind all the time?

19 A. I certainly did.

20 Q. You stated just now that you had heard a rumor in
21 the neighborhood about the sale of the land?

22 A. Sale of the timber?

23 Q. Yes? A. Yes, sir.

24 Q. Who did you hear it was sold to?

25 A. The first time I heard it I heard it was sold to Mr.
26 Crockers, but I didn't know who they were.

1 Q. When did you hear that?

2 A. Shortly after he bought from us, a month or two months.

3 Q. Then it was current rumor in the neighborhood that Mr.
4 Holland had sold the timber? A. Yes, sir.

5 Q. Everybody knew it? A. I don't know that
6 everybody knew it.

7 Q. Who did you hear say so?

8 A. Elisha Hare, and the next time I heard it, if my memory
9 serves me aright, I heard Jackson Howell speak of it.

10 Elisha Hare told me that he heard it here in Suffolk, I
11 think, but where they got it from, or who told them, I did
12 not ask them. I said "that is all right, it don't make
13 any difference if he has sold it".

14 Q. And about the same time you heard it rumored that
15 they claimed five years in which to cut it?

16 A. Not then.

17 Q. How long? A. Quite a while.

18 Q. How long? A. May be 18 months or
19 two years.

20 Q. Then probably 18 months after you heard that rumor,
21 you heard another rumor that the parties who purchased
22 claimed five years in which to cut it?

23 A. The next rumor I heard was that the timber was sold
24 again to another firm, but I never knew who that firm was
25 until I got your testimony, and then I heard two rumors.
26 That was one, and then I heard that he had five years in which

1 to cut it.

2 Q. It was about 18 months ago that you heard the rumor,
3 that he had five years in which to cut it?

4 A. I don't know about the 18 months, but I heard it.

5 Q. How long ago was it?

6 A. It was sometime during last year, and this year both
7 I heard the rumor.

8 Q. What time last year? A. I don't know.

9 Q. Was it the early part? A. I don't know
10 whether the early part, or middle part, but last year.

11 Q. Who told you about it? A. Elisha Hare
12 told me that some one told him that it was in the Clerk's
13 Office. I told him that it was not so, and he said "it is
14 so", and I said "I don't know why it should be so, because
15 we have not granted him two years".

16 Q. Did not this fellow Harris, who testified yesterday,
17 tell you that he had more than three years?

18 A. No, sir, but I remember speaking to him something con-
19 cerning it.

20 Q. He said, as I recall, that it was current rumor up
21 there that they had five years in which to cut it, and that
22 you are one of the men he talked to about it?

23 A. I heard it, and stated it to him the same way, and he
24 stated it could not be so.

25 Q. You heard the statement he made yesterday?

26 A. I heard a part of it.

1 Did you hear Harris' statement yesterday as to when you told
2 him about the rumor you had heard?

3 A. No, sir, I did not hear him say when. He said Frank
4 Gordon told him, but he did not say when I told him.

5 Q. When you heard that rumor about the extension, what did
6 you do?

7 A. I first talked awhile in the
8 neighborhood, and after awhile I decided I would go and see
9 if it was so.

10 Q. When was it you came? A. Some time this
11 year. I don't know the date, but some time this year.

12 Q. You knew that the timber had been sold to Mr. Crocker?

13 A. I knew it after your statement.

14 Q. And knew it before that statement?

15 A. Yes, sir.

16 Q. You did not go to Mr. Crocker and say anything about it?

17 A. I have never seen him. I don't know him, and don't
18 know where to go to see him.

19 Q. You did not inquire? A. I did not inquire
20 where he lived. I did ask where he lived, but was told that
21 he lived in Suffolk. I have never seen him. I came one day
22 and asked where he lived, and me and Elisha Hare were together,
23 and Elisha said that he lived in Suffolk, and knew where
24 they said he lived, but so far as to see the man, or know
25 where he lived positively, I didn't know. Some of them told
26 me that he came to my house. My wife said that he came there,

1 and two of them were together, and I was off at work. She
2 said that two of them who bought the lumber came, the
3 Crocker Brothers, some of them called them, but I didn't
4 know them. That was at my gate before the three years were
5 out, and they came to look at the timber, and it was inside
6 of the three years, but they have never been there since.

7 Q. You got a letter from me, didn't you, claiming an ex-
8 tension of two years? A. Yes, sir.

9 Q. The money was afterwards offered to you, and the two
10 years interest? A. No, sir.

11 Q. Has not Mr. Gay been to you and tendered you the money?

12 A. He came to me to sign an agreement for the 6 per cent
13 interest, and I told him I had not signed any agreement for
14 any extension, and there was no interest due me for any
15 extension, so I did not propose to sign it.

16 Q. Did not he offer to pay you the money?

17 A. I have not seen any money.

18 Q. Did not he say he would pay the money if you signed the
19 agreement?

20 A. He said he was getting
21 them to sign up for the interest so he could pay it, but
22 as to giving me the money, or offering it, I have not seen
23 it.

24 Q. That is what he said? A. Yes, sir.

25 Q. And you refused to sign it? A. Yes, sir.

26 Q. In other words, you refused to accept the interest?

A. I did, because I ain't got none.

Q. And you swear positively now that there was no two years extension in this deed?

A. There never has been to my knowledge.

Q. And yet you did not read the deed?

A. I did not read it.

RE DIRECT EXAMINATION

By Mr. Withers:

Q. How long have you known Mr. Gus Holland?

A. I have been knowing Mr. Gus Holland ever since - the first of my knowing Mr. Gus Holland has been about twelve years ago, I think, but he could limit the time better than I could. It was the time he had a saw mill set up in front of Mr. Everett's.

Q. Have you been doing business with him?

A. I worked for him at the saw mill, and since that time I never had any more dealings with him no more than trading back and forward in the store.

Q. Did you rely on his statement?

A. I did, because everybody told me that he was an all right man, and I always found him all right. He treated me all right, and from other folks' testimony I thought he was a man of his word, and that is why I signed the contract, relying on his word. Relying on his word, and the confidence I had in the man.

KATIE C. GORDON, (Colored), being duly sworn, testi-

fied as follows:

Examined by Mr. Withers:

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

A. Katie C. Gordon; thirty-one; near Holland; occupation housekeeping; I know the parties to this suit.

Q. Are you the wife of Frank Gordon?

A. Yes, sir.

Q. Do you know anything about the bargain between your husband and Mr. Gus Holland about the sale of this timber?

A. Nothing more than he came to my house to sign the deed.

Q. Who came with him? A. Mr. Elihu Joyner.

Q. When you came into the room the day the deed was signed, who did you find in there? A. They came in

there and found me in there. I was already in there.

Q. Then you and Frank, your husband, and Mr. Joyner and Mr. Holland were together?

A. There was more than us in there.

Q. Who else was in there? A. My children and the lady that shrouded the baby.

Q. Just tell now, in your own way, what Mr. Holland said, and what Mr. Joyner said, and what you said, and what Frank said? A. I can't remember all that

was said, because I was nervous that morning, and was not taking much notice. When he came in he asked for a table,

1 or something to write on, and Frank prepared a place for him,
2 and he told him to sign, but I did not know what he was
3 talking about, and I looked up and heard when he turned
4 around and handed it to me and asked me to sign, and I refused,
5 and I said "I promised never to touch another pen about this
6 land", and he said "it is nothing about the land, but it is
7 only to show that if Frank was to die he had the right to
8 cut and remove the timber in three years.

9 Q. Who said that? A. Mr. Holland. Frank
10 said "that is it", and I signed.

11 Q. Before Frank signed did you hear Mr. Holland tell him
12 anything about the deed? A. No, sir. They
13 met at the door.

14 Q. You did not hear the conversation between them?

15 A. No, sir. After we signed they went out.

16 Q. When you signed you are certain Mr. Holland said the
17 words you have repeated? A. Yes, sir. I did
18 not touch the pen until he told me that.

CROSS EXAMINATION

20 By Col. Holland:

21 Q. You were troubled that morning, Katie, I suppose, and
22 did not pay much attention to what was going on?

23 A. I paid attention to what he told me, or I would not
24 have touched the pen.

25 Q. But you paid very little attention to the conversation
26

1 between ther?

A. That was at the door.

2 Q. As I understand it, you signed the deed because they
3 told you that they were simply selling the timber, and it
4 had nothing to do with the land?

5 A. He told me it was to show that if Frank was to die that
6 he was to cut and remove the timber inside of three years.

7 Q. You don't know what else was said by him?

8 A. There was not much said in the house, because he was
9 in a hurry.

10 Q. You don't know anything about the original agreement?

11 A. No, sir, no more than he came there one day when Frank
12 was not there, and said he was going to put the saw mill up,
13 and spoke to me something about cooking for some of the boys.

14 Q. Frank said that Mr. Holland said that this was the
15 agreement that they had made; you don't know whether that
16 is true, or not?

17 A. He did not read none of it to me.

18 Q. And so far as you know the agreement you signed was the
19 agreement your husband and Mr. Holland made?

20 A. That is what he told me.

21
22
23 -----oOo-----
24
25
26

*Just before the trial he bought the
lot from Holland*

1 A.T.HOLLAND. (Colored), being duly sworn, testified
2 as follows:

3 Examined by Mr. Withers:

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

6 A. Anthony T. Holland; residence Holland; age fifty-four;
7 occupation farming; I know the parties to this suit.

8 Q. In February, 1903, were you the owner of the tract of
9 land near Holland? A. Yes, sir.

10 Q. Is this in the neighborhood of the land on which Mr.
11 A.A.Holland bought the timber at that time?

12 A. Yes, sir.

13 Q. This was a part of this line of timber?

14 A. Yes, sir.

15 Q. At that time did you bargain to sell this timber to
16 Mr. Holland? A. Yes, sir.

17 Q. State, in your own words, what your bargain with Mr.
18 Holland was?

19 BY COL. HOLLAND: The question and answer are ex-
20 cepted to for the reason that it seeks to elicit
21 irrelevant and immaterial testimony.

22 A. The first time he came over here I told him I could not
23 tell him whether I would sell it, or not. The reason I
24 could not tell him whether I would sell it, or not, I
25 bought the land, and gave a deed of trust on it to Mr.
26 John Vincent. So I had to see him first to know whether he

1 would be willing for me to sell this timber, or not. After
2 seeing Mr. Vincent he told me that it was all right to sell
3 the timber, that he did not object. Mr Holland come
4 through again, and he walked over the timber and looked at
5 it, and talked it over, and I told him of course I did not
6 want to sell the timber for one reason. The reason I did
7 not want to sell the timber, that it was not but a small
8 piece of lumber I had, but what was on the land was good
9 lumber. I said "this piece of timber has never been cut.
10 I sold Mr. John Gum fifty thousand feet of lumber on the
11 other side, and this piece I reserved to have a house built." "
12 That was our talk in going through the timber. He said
13 "Uncle Anthony, if you will sell this timber I will cut
14 you enough lumber to have a house built. I am going to
15 put the mill over at Frank Gordon's, and I will cut enough
16 lumber to build a house", and I thought that was the time
17 to sell. After going through the timber, he came back
18 to the house, and came up to the well, and my wife come
19 to the window, and Mr. Holland called her attention. She
20 refused to sell. She refused right straight. She said
21 "you would sell the last stick of lumber off the land from
22 the children". Mr. Holland said "Aunt Lucy sell me the
23 piece of timber; I am going to put the mill here in two
24 months, and Uncle Anthony can get work to do" - which I do.
25 I do not only work at farming, but work at trade wherever
26 I can. He said "I will give Uncle Anthony work to do in

1 build up; I have my stables and shacks to build, and will
2 give Uncle Anthony work to do to help him". I thought
3 it was my chance, because there was no mill near me, and
4 for that reason I persuaded my wife to sell. Finally we
5 agreed that we would sell the timber, but there was nothing
6 said about the price, what he was to give me. There was
7 not a word said what he would give me. I said "Mr. Holland,
8 how long do you want to cut this timber", and he said "three
9 years". He says I am going to put this mill here inside of
10 two months, just as soon as I get through cutting the
11 lumber on the Seaboard Road" - that is what he said, but
12 I don't know where it was - he said "I am going to move
13 the mill right here, and I will cut your lumber, and I will
14 give you work to do just as I before stated". He said "I
15 will give you work to do, and will help you all I can in
16 that direction". I knew Mr. Holland all my life, and knew
17 his father. I even remember when his father and mother
18 were married, and have been knowing him all my life, and
19 didn't know anything wrong about him, and helped to erect
20 the dry kiln when he built on Captain Lee's land, and I have
21 done lots of work for him since then. Mr. Holland, on
22 Saturday before the second Sunday in February, went away
23 after he and I bargained, and I agreed I would sell it to
24 him, but there was no price set. On Saturday before the
25 second Sunday in February was my meeting day, or conference
26 day - we call it conference day, and some people call it

1 build up; I have my stables and shacks to build, and will
2 give Uncle Anthony work to do to help him". I thought
3 it was my chance, because there was no mill near me, and
4 for that reason I persuaded my wife to sell. Finally we
5 agreed that we would sell the timber, but there was nothing
6 said about the price, what he was to give me. There was
7 not a word said what he would give me. I said "Mr. Holland,
8 how long do you want to cut this timber", and he said "three
9 years". He says I am going to put this mill here inside of
10 two months, just as soon as I get through cutting the
11 lumber on the Seaboard Road" - that is what he said, but
12 I don't know where it was - he said "I am going to move
13 the mill right here, and I will cut your lumber, and I will
14 give you work to do just as I before stated". He said "I
15 will give you work to do, and will help you all I can in
16 that direction". I knew Mr. Holland all my life, and knew
17 his father. I even remember when his father and mother
18 were married, and have been knowing him all my life, and
19 didn't know anything wrong about him, and helped to erect
20 the dry kiln when he built on Captain Lee's land, and I have
21 done lots of work for him since then. Mr. Holland, on
22 Saturday before the second Sunday in February, went away
23 after he and I bargained, and I agreed I would sell it to
24 him, but there was no price set. On Saturday before the
25 second Sunday in February was my meeting day, or conference
26 day - we call it conference day, and some people call it

1 monthly and some conference. I taken my wife on the cart
2 and started to Church. When I got to my gate there I met
3 Mr.A.A.Holland and Mr. Elihu Joyner walking. Mr. Holland
4 had his books under his arm, and Mr. Elihu Joyner had a
5 ham of meat in his hand coming from towards Mr. David Milteer's.
6 He said "I just started to your house for you, to sign up a
7 contract for this timber which you and your wife agreed to
8 sell me." I said "what about the price?" "Well, what do you
9 charge for it?" I said "I don't know; what is it worth",
10 and we had one or two words about the price. My wife said
11 "will you give us \$100 for it?" "No, no; I could not give
12 that", and I said "you will give \$75, wont you," and he said
13 "no, I can't give that, it is nothing but a small piece of
14 timber", and I said "you know this is a good piece of
15 timber; it has never been cut", and I said "there is one pine
16 on that land that is a fine pine", and he said "yes, I know
17 your lumber is good, but I can't give \$75 for it". He
18 would not set any price, and I said "will you give \$50 for
19 it?" and he said "now, you kind of come in the neighborhood
20 of my price", and he said "I will give you \$40 for it".
21 I said "no, sir, I will never take that; \$50 is my price", and
22 he said "Uncle Anthony, I will split the difference, and
23 give \$47.50". I thought over it, not but a moment because
24 I was sitting on the cart with my wife starting to churchh,
25 and they were on the ground, and he said "I will split the
26 difference and give you \$47.50". I agreed to make the \$47.50,

1 He said "remember now you spoke about John Gum buying it,
2 and not paying". He said "this is cash, and I will pay it
3 right down now, every bit". I said "yes, sir". I said "cash
4 right now", and he said "yes, I am going to pay right now, a
5 check right now", and it encouraged me. I did not so
6 particularly need the money, but wanted it. I said "how
7 long do you want to cut it", and he said "three years", and
8 I signed it. When he pulled out the contract I said "what
9 does all this mean, this is a great long thing, and looks
10 like a deed", and he says "all contracts are fixed up like
11 that", and he says "all this stuff is no more than a matter
12 of form, and this just identifies my and your bargain". He
13 said "we agree to cut your lumber inside of three years, and
14 that is all the time I ask you for". I signed it upon
15 those terms.

16 By Mr. Withors:

17 Q. Did you read the contract? A. No, sir.

18 Q. Did he offer to give it to you to read?

19 A. No, sir, I did not want to read it.

20 Q. Why not? A. Because I had the confidence
21 in him - the impression made upon me was this, that he was
22 going to move the mill and cut me a bill of lumber, and I
23 left the pines there especially to cut a bill of lumber.

24 Q. Why did not you read the contract?

25 A. I thought it was like his and my bargain.

26 Q. What right had you to think the contract set forth your

1 bargain? A. Because he said it is just
2 what we agreed. When I asked "what does all this contract
3 mean", he said "nothing more than our bargain on this lumber".

4 Q. What was your bargain as to time?

5 A. Three years.

6 Q. He said "that is all I want, three years".

7 Q. Did he, at that time, tell you anything about wanting
8 two more years? A. No, sir.

9 Q. Did he then, or at any other time, say that you would
10 have a right to collect interest on the purchase price after
11 the three years? A. No, sir.

12 Q. Did your wife sign at that time? A. Yes, sir.

13 Q. Have you had your timber valued within the last year?

14 A. Yes, sir.

15 Q. What is its value now? A. \$250.

16 Q. Are you willing to give back to Mr. Holland the money
17 if he gives up all claim to the timber without cutting it?

18 A. Mr. Gay come to my house on the 25th of June, and
19 brought me the interest on the purchase price. I said "on
20 the purchase price of what", and he said "the lumber you
21 sold to Mr. A.A. Holland". I said to him "Mr. Gay, I don't
22 know anything about that", and I said "but I will tell you
23 what I will do". I said "I sold it for \$47, and if you
24 want the \$47 I will give it back to you", and he said "no,
25 sir, I will not do it", and I said "will you take \$100 for
26 it", and he said "no".

1 Q. Then you are willing to give him back his money to
2 get the release? A. Yes, sir: I would be
3 perfectly willing to do it.
4 Q. When did you first find out how the deed which was re-
5 corded read? A. The deed?
6 Q. The contract? A. The first of my finding
7 out about the deed, the way it was recorded, was when I
8 received a letter from Mr. E.E.Holland.
9 Q. That was the first time you knew that the deed was other
10 than granting three years? A. It was the first
11 time I ever knew anything about it. It was on the 17th
12 day of March, if I mistake not.
13 Q. What did you do after receiving Col. Holland's letter?
14 A. Read it and showed it to my wife, and I spoke to Mr.
15 Milteer and several of them, and Mr. Milteer said "I received
16 one just like it", and I took the letter and laid it down,
17 and never replied to it.
18 Q. When did you go to the Clerk's Office to look after the
19 deed? A. I have never been there in my life
20 to look after that deed.
21 Q. Then the first time you ever heard about the deed giving
22 more than three years was on receipt of Col. Holland's letter?
23 A. I heard it rumored last December that the contracts
24 that sold to Mr. A.A.Holland had an extension of two more
25 years, but I did not know whether it was true, or not.
26 Q. What did you do when you heard it? A. I didn't do any-

1 thing.

2 Q. Did you inquire whether it was so?

3 A. No, sir.

4 Q. Did you go to see Mr. Holland?

5 A. I went with Mr. Tony Holland, I think about the last
6 of February or the first of March. I think it was somewhere
7 about the first week in March. Me and Mr. Tony Holland
8 went up to Mr. Holland's mill, and went by Mr. Joe F.
9 Holland, while he was working on his farm.

10 Q. What did you go for? A. My business was
11 to ask him was this rumor true, did we have any extension
12 on the contract I signed any more than three years.

13 Q. When you got there with Mr. Tony Holland what happened?

14 A. Mr. Holland was in the house when we got there preparing
15 to dress himself to start to Suffolk, and we waited at the
16 gate until he come out, and I took his satchel in my hand, and said
17 I would carry it, and Mr. Tony Holland asked him about the
18 extension of time, and he replied to Mr. Tony Holland, to
19 the best of my knowledge, "several people have asked that
20 question for the last few weeks, and if you want to find
21 out about the extension of time, you go to the Clerk's
22 Office", and Mr. Tony Holland replied like this: "You know,
23 Mr. Holland, my time was shorter than the rest of them, be-
24 cause you told me so - you told me my time was shorter than
25 the rest, and you know I didn't give you but two years", and
26 he said "I believe it was", and he walked down the street, and

1 he gave Mr. Tony such a short answer about so many coming
2 there, it cut my feelings, and I never told him what I come
3 there for, but I toted the satchel down town, and when I
4 got close to the depot handed it to him, and was glad to get
5 rid of it. Mr. Holland knows that it is the truth, I ain't
6 never told him my business. It hurt my feelings so about
7 when he cut him off I ain't never told him my business. I
8 come here to ask Mr. E.E.Holland about it, and he turned his
9 back, and I ain't asked him.

CROSS EXAMINATION

By Col. Holland:

Q. You and your wife signed the agreement?

A. Yes, sir.

Q. And Mr. Gus Holland told you it was the agreement?

A. Yes, sir.

Q. And upon his statement you and your wife signed it?

A. Yes, sir.

Q. You didn't know what was in it?

A. No, sir.

Q. You didn't read it?

A. No, sir.

Q. If he had asked the additional time you would have given it?

A. If he had put the mill there I might have given him six. I don't know what I would have done. I would have been perfectly willing to give him as much time as he wanted. He did not ask me nothing like it,

1 and there was never such a word spoken between us.
2
3 Q. Suppose he had read that contract to you, and it had
4 said three years in which to cut it and two years additional
5 with 6 per cent, you would have signed it?
6 A. I would have called his attention to it.
7 Q. But you would have signed it?
8 A. I don't know whether I should have, or not. If he had
9 come up and said "there were two more additional years, I
10 don't know whether I would, or not. If he had moved his
11 mill like he promised I believe I would have granted it.
12 That was my whole object, to get the mill. Mr. Holland
13 could not have bought it for \$150, or any other man.
14 By Mr. Burgess:
15 Q. That is original growth stuff? A. Yes, sir, all
16 the growth that was ever on it.
17 Q. Is there much second growth? A. It is first,
18 second and third. There is one pine there I told Mr. Holland
19 was enough to pay him for the \$47.
20 Q. What is the average size trees?
21 A. I believe they will cut from five feet through to ten
22 inches.
23 Q. Has there been much increase in the pine in the last
24 two years? A. The small ones have grown
25 powerfully.
26 Q. What proportion of them are small?
A. I don't know what proportion of them.

1 Q. About how many acres is the timber on?

2 A. I suppose about twelve acres, as near as I can guess.

3 Q. How many acres small growth and how many acres original?

4 A. It is mixed lumber, because it is all the growth ever
5 since the flood. The big pine looks like it has been there
6 since the flood.

7 Q. When he offered the \$47 you thought it was all you could
8 get?

9 A. I thought it was reasonable with
10 the promised he made. That was exactly the thought I had
11 upon it.

12 Q. When he handed you the deed you could have read it?

13 A. I don't know whether I could, or not. By Mr. Elihu
14 being with him as Notary Public I thought it would be all
15 right, and I don't know whether I could read his writing.

16 Q. That is your writing where the name is signed?

17 A. Yes, sir, I did that.

18 Q. About the only complaint you have now is that he has
19 not put the saw mill there?

20 A. My complaint is just like this: My complaint, so far
21 as he did not cut the timber in the time he promised me, in
22 the three years, when the three years expired I thought the
23 timber was mine.

24 Q. That is what you want - you want to get the timber
25 back?

26 A. Yes, sir, it certainly
does take lumber to build a house, and I want it for my
house. I would not let Mr. Gum cut it for that purpose.

1 Q. You heard that he sold it to the Crocker Brothers?

2 A. I heard it, but whether it was true or not, I don't
3 know. I think I was in Dr. Holland's office one day, and
4 he spoke to me and said Mr. A.A.Holland has sold the land.
5 He said "Mr. A.A.Holland has sold that lumber to the Crocker
6 boys", but who they were I don't know.

7 Q. You have never talked to the Crocker boys or Mr. Cramer?

8 A. No, sir.

9 By Mr. Holland:

10 Q. You received a letter from me? A. Yes, sir.

11 Q. Claiming an extension of two years in which to cut the
12 lumber? A. Yes, sir.

13 Q. So you knew sometime in March?

14 A. The 17th of March I received it.

15 Q. You knew Mr. Cramer claimed two years in which to cut
16 the timber? A. Yes, sir.

17 Q. And he tried to negotiate with you for two years addition-
18 al? A. That is what the letter says.

19 Q. And Mr. Gay afterwards came to you and tendered the
20 interest money.

21 A. He came on the 25th of June. That was the first time
22 I saw Mr. Gay, if I mistake not.

23 RE DIRECT EXAMINATION

24 By Mr. Withers:

25 Q. Have you ever been to school?

26 A. I have been to school a little when a boy.

Q. How much did you go to school?

A. I suppose I have been to school as much as six months in my life, more or less. I do not think it was more than that.

Q. Are you a quick and prompt reader? Can you pick up a newspaper and read it?

A. I used to read before my eyesight failed.

Q. Had it failed you in 1903?

A. Yes, sir, my eyesight has been failing me for five years, ever since I was forty-eight years old. It has been failing about six years.

Q. Can you read the contract?

A. No, sir. If you give me a letter here I can read it.

NOTE: The original deed is handed the witness.

Witness: I might stumble over it, but I do not think I could read it, and I do not think it worth while to try.

Q. See if you can read there "and said parties of the first part hereby grant"?

A. Let me get to the light. "And said parties of the first part hereby grant, accord" - I don't know whether it is accord, "a-c-c-o-r-d" - what does that spell? I don't know what it spells; "and assure unto the party of the second part". "assign the full term of" - when it gets down to print like this it seems the printing runs together. You read it.

I believe you can read it all right. I would like to heard it.

Q. It took you exactly two minutes by the clock to read so

1 much of the contract as you attempted?

2 A. I did not read that, because I had to spell one word,
3 and don't know what it is now. It is "a-c-c-o-r-d".
4

5 RE CROSS EXAMINATION

6 By Mr. Burgess:

7 Q. During the time you were trying to read the contract
8 you were doing some talking, were you not? You were
9 talking at the same time.

10 A. I was trying to read it. I could not see good.

11 Q. I am going to read this thing to you: "And the said
12 parties of the first part" - (here reads the clause). What
13 does that mean?

A. On the purchase price?

14 Q. Yes?

A. It means the face value I

15 got for the lumber.

16 Q. \$47.50?

A. Yes, sir.

17 Q. That he was to pay you 6 per cent on that?

18 A. Who was?

19 Q. Mr. Holland?

A. No, sir.

20 Q. What does the language mean?

A. That is the

21 meaning of that language.

22 Q. When was he to pay you that? When does this say he
23 was to pay you that? Was it the first year?

24 A. It looks to me, in my estimation, if that be so, if I
25 was to give either one of these gentlemen a note, or any
26 agreement to pay a certain debt at a certain date, it would

1 be my business to be there on that date that this agreement
2 calls for.

3 Q. You do not understand me. If you had signed a paper
4 which gave him three years in which to cut it, and then
5 two years more by paying 6 per cent interest on the amount
6 he paid you, how long would he have to cut it in?

7 A. He would have three years.

8 Q. How much more? A. If he had not cut and
9 removed it, he ought to have come to me at the end of the
10 three years, and say as he did first: "Uncle Anthony, the
11 time you gave me is out, and I ask you for an extension
12 of two more years if I will pay you the interest on this
13 purchase price", and it looks to me like he ought to pay
14 it right then, and he hasn't it until he pays it.

15 -----oOo-----

16
17
18 At one o'clock the taking of depositions in this case
19 was adjourned until 2.30 o'clock.

20 -----oOo-----

AFTERNOON SESSION

September 21st, 1906.

Met at the expiration of the recess.

PRESENT: Same parties as heretofore.

LUCY C. HOLLAND, (Colored), being duly sworn, testified
as follows:

Examined by Mr. Withers:

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

A. Lucy C. Holland; age forty; near Holland; occupation
housekeeping; I know the parties to this suit.

Q. Are you the wife of Anthony T. Holland?

A. Yes, sir.

Q. Do you know anything of the agreement between Anthony
and Mr. A.A. Holland for the sale of this timber before he
brought the deed to be signed? A. Yes, sir.

Q. State what that agreement was with reference to the
time in which Mr. Holland was to have to cut the timber?

BY MR. BURGESS: The question is objected to upon
the ground that it seeks to elicit information
about a contract separate and distinct from the
one at issue, and asks for declarations made by
Anthony Holland who is not a party to this suit,
and on the ground that the testimony will necessarily
be hearsay.

1 A. Mr. Holland came there one morning in buying the
2 lumber from my husband. He and my husband had been over
3 the woods to look at it, and he came up to the house to get
4 a drink of water, and he called my attention, and I went to
5 the window. I did not go out because I was not in trim.
6 He come and told me he come to buy the timber, and I told
7 him the timber was on my land, and I did not want to sell
8 it, that it was for building the house, and if he was going
9 to put a saw mill there I would sell it, and he said "Aunt
10 Lucy, I expect to put a saw mill there inside of two months."
11 I said "if you put a saw mill there, and cut some timber,
12 you can have it", and that was the bargain.

13 Q. How long was he to have to cut the timber?

14 A. Three years. I asked Mr. Holland what did he tell
15 him, and he said three years, and the morning he signed the
16 deed Mr. Holland asked how many years he was to have, and
17 he said three years.

18 Q. You say Mr. Holland asked him? A. My Anthony
19 called him Mr. Holland.

20 Q. On the first day when Mr. Holland was there talking
21 to you through the window, did he state positively then that
22 he only wanted three years? A. No, he did not.
23 That was at the cart when he signed the deed.

24 Q. Who said anything about the time in which to cut the
25 timber when you were at the window? A. Mr. Holland.

26 Q. Which Holland? A. Mr. Anthony Holland, and

1 in going over I said "Mr. Holland, the timber that was left
2 on the land is for my house, and I don't want it cut", and
3 I told Mr. Holland that he would sell the last bit of timber
4 on the land from the children, and he would not have any fire
5 wood, and Mr. Gussie Holland was my Mr. Holland's friend and
6 boys together, and I supposed that they loved each other,
7 and he persuaded him to sell it to him, and he sold it.

8 Q. Did you agree to sell the timber on account of his
9 representation that he would put a mill there?

10 A. Oh, yes, sir, I told him then. I asked Mr. Holland
11 "are you going to put a mill there", and he said "inside
12 of two months", and I said "if you put it there inside of
13 two months you can have the timber".

14 Q. When he came with the deed where were you?

15 A. At my front gate going to church, in the cart.

16 BY MR. BURGESS: The question and answer in regard
17 to the location of the mill is objected to on the
18 ground that it tends to vary the terms of a written
19 contract. The paper writing itself is the best
20 evidence of the contract.

21 By Mr. Withers:

22 Q. Who came with Mr. A.A. Holland?

23 A. Mr. Joyner was with him.

24 Q. Were they in the road, and were you in the cart?

25 A. Yes, sir, they were at the gate in the pathway.

26 Q. What was said between your husband, Anthony Holland, and

1 Mr. A.A.Holland at that time?

A. Mr. Holland --

2 Q. Which are you talking about?

A. My Anthony.

3 Anthony said "Mr. Holland, what is this", and he said "noth-
4 ing but a matter of form showing I have bought your timber,
5 and pay you for it". I said "well, give it to Mr. Holland".
6 Anthony Holland signed it, and after he signed it he asked me
7 to sign it, and I said I didn't want to sign it -- "I am
8 afraid I wont get my lumber", and Mr. Gussie Holland said
9 "yes, you will", Aunt Lucy", and I did not make much
10 of it.

11 Q. Was anything said then as to the time in which he was
12 to cut it?

13 A. Yes, sir, three years. Anthony
14 Holland asked how long he was to cut it, and he said three
15 years, and he said he was in a hurry, and did not have time
16 to go over the form, that it was nothing but a matter of form,
17 stating he did not have time to read it, and he said he
18 promised Elisha to come up there for him to sign, and we
19 signed the contract.

20 Q. Mr. Gus Holland said that he did not have time to read
21 the contract?

A. No, sir.

22 Q. But that it gave him three years in which to cut the
23 timber?

24 A. Yes, sir, it gave him three
25 years.

26 Q. Did Mr. Gus Holland, or anybody else, ever say anything
to you at the time this contract was entered into, or while
the bargain was being made, about having two years additional

1 by paying 6 per cent interest?

2 A. Mr. Gussie Holland never named it to me in his life.

3 Q. Did anybody ever name it to you?

4 A. No more than I heard some of them say that we were to
5 have 6 per cent on the dollar.

6 Q. When did you hear that? A. Here some time
7 last year.

8 Q. I am talking about before you made the contract?

9 A. No, sir, I never heard that. I never heard nothing
10 like that, and that was not named. I never heard that until
11 last year.

12 Q. When did you first hear anything about these two extre-
13 years, and paying 6 per cent? A. The first thing
14 I heard about it was when Mr. Ed Holland written it, and then
15 I did not believe it. I knew it was not given, and I didn't
16 believe it.

17 Q. So the first time you ever knew anything positively
18 about it was when you received Mr. Ed Holland's letter?

19 A. Yes, sir.

20 Q. Before that time you say you heard some rumor; what
21 was it? A. Some of the neighbors said some-

22 thing about the 6 per cent, and I didn't believe it.

23 Q. You looked upon it as an idle rumor?

24 A. Yes, sir.

25 Q. And did not believe it? A. No, sir. I knew
26 Mr. Gussie Holland, and I believed he was true to his word.

1 Q. You relied on Mr. Holland before the deed?

2 A. I did.

3
4 CROSS EXAMINATION

5 By Mr. Burgess:

6 Q. You have been in the room where this testimony has been
7 taken ever since yesterday morning?

8 A. Yes, sir.

9 Q. You heard your husband testify? A. Yes, sir.

10 Q. Do you agree with everything he said? A. Yes, sir.

11 Q. Did he say anything you did not agree with?

12 A. He said so much I don't know what he did say.

13 Q. You and he talked the matter over?

14 A. Yes, sir, we talked the matter over, and furthermore
15 I teased him. He talked me to go into this, and I have not
16 been worried, but just teased Mr. Holland.

17 Q. How did you tease him? A. Teased him
18 about selling my lumber to this Holland man. Both of them
19 were Hollands.

20 Q. The main complaint you have now is that there will not
21 be a saw mill there? A. Yes, sir, and I am
22 sorry, too.

23 Q. If the saw mill was located there, and the lumber was
24 cut, you would not have any complaint?

25 A. No, if I had a good bill of lumber to build the house
26 I would have been all right.

- 1 Q. If he had put the saw mill there, and had gone to
2 cutting, there would not have been any trouble?
3 A. No.
4 Q. Even if it took six years? A. Or if he had
5 dropped me a postal card I would have agreed with him, be-
6 caused I liked Mr. Holland.
7 Q. If he had said it that day there would not have been
8 any trouble? A. No, sir.
9 Q. Did you ask him to put in the contract about putting
10 the saw mill there? A. Yes, sir, I asked
11 him what was his intention.
12 Q. Did you ask him to write it in the contract?
13 A. No, sir, I did not, because I thought it was all right.
14 Q. (Handing witness the original deed). Is that your
15 signature? A. Yes, sir.
16 Q. Do you see any difference in the looks of that paper
17 now from what it was when you signed it?
18 A. Of course. It is older, and I do not think all this
19 writing was on top.
20 Q. All this writing here (pointing to the description)?
21 A. Yes, sir.
22 Q. Are you positive about that? A. I will not
23 be positive, because I did not pay very much attention
24 to it.
25 Q. You did not attempt to read it? A. No, sir.
26 Q. Did you ask anybody to read it to you? A. No, sir.

1 Mr. Holland said he was in a hurry, and we were, too, and
2 we passed on.

3 Q. Did you ask him to take the paper to tell you what
4 was on it?

A. No, sir.

RE DIRECT EXAMINATION

7 By Mr. Withers:

8 Q. Aunt Lucy, can you read very quickly?

9 A. No, sir, I have to take time and spell. I have not
10 a very good education.

11 Q. How many days did you go to school?

12 A. I can't tell you how many days, but I went to free
13 school some eight terms, but not regular. I had to work
14 parts of the day. I had a poor chance, and some days my
15 classes were ahead of me, and a scholar in school like that
16 has a very poor chance, and then I did not study like I
17 ought to.

18 Q. What was the reason you did not read this deed when
19 you signed it?

A. Because I was in a hurry, and
20 Mr. Holland was in a hurry, and I thought it was all right.

21 Q. Why did you think it was all right?

22 A. Because I had confidence in him, and I knew what he
23 told me, and I had told him, and I thought it was all right,
24 and I did not believe anything else was in it.

25 Q. Then you relied on him as to what was in the deed?

26 A. Yes, sir, I did.

1 Q. Do I understand you to say Mr. A.A.Holland said that
2 he did not have time for you to read the deed?

3 A. I said "what is this in here, let me see what is in
4 here", and Mr. A.A.Holland said "I have not time, I promised
5 Uncle Elisha to come up there", and he gave a check, and
6 we signed it.

7 Q. Did you tell Mr. Burgess you did not know whether the
8 deed was filled in at that time? A. I don't
9 know whether it was filled in.

10 Q. Do you know whether it was a mere Blank form you
11 signed? A. It was nearly a blank
12 form.

13 Q. Just printed words in it? A. Yes, sir.

14 BY MR. BURGESS: Objected to as leading.

15 Witness: I do not think all that was in here (pointing to
16 the written description).

17 By Mr. Withers:

18 Q. Was this in there, the acknowledgement?

19 A. I disremember. I did not pay but very little notice
20 to the deed, and Mr. Holland knows I didn't. I just wrote
21 my name, and he said "oh, it is not nothing", and most of
22 my writing was through foolishness, because I had confidence
23 in Mr. Holland that it was all right, and I never thought I
24 would be in this snap like this, or he would never have
25 gotten my timber.
26

JAMES A. HOWELL, (Colored), being duly sworn, testified

as follows:

Examined by Mr. Withers:

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

A. James Alfred Howell; age I don't know exactly, but about fifty-five years old, I believe; Hollands Corner; occupation farmer.

Q. Do you know the parties to this suit?

A. I know but mighty little about them.

Q. State what, if anything, you heard Mr. A.A.Holland say about putting down his saw mill?

A. All I know about it, one day Mr. Holland come along there by my house, sometime along in the day, late in the day, and said "Jim, come on and go with me to John Rawles", and I said "all right". I got up in the buggy and went down a blind path not far from my house, half a mile, as far as we could drive the buggy, and he agreed to tie the horse and went up to the house to call Mr. John Rawles to go around the line of the timber. Mr. Rawles wanted to carry his horse, and ride horseback, and Mr. Gus Holland said "you can't ride the horse through there, as thick as the bushes are, and let us go walking", and Mr. Rawles agreed to go like he said go. All three of us came on back, and he went around the line, and he showed his father's line, and his line, and followed up the line to find the particular

1 piece of timber that he was trying to buy, but he had not
2 bargained for it all then. We came on back, and got to the
3 larger bulk, and said "if I can buy Mr. Milteer's over here,
4 and Frank Gordon's over here, and we close on the old con-
5 tract where Mr. John Gum was to run out years ago, and if
6 I can buy here, Frank Gordon's would be a good place to
7 put the mill, and I can run them out on this old track."
8 Mr. Rawles asked him in what time he intended to put the
9 mill, and he said in about two or three months, and that
10 is all I know about it.

-----oOo-----

NOTE: It is agreed between counsel that the original
deeds from Joseph F. Gordon and wife, A.A.Howell
and wife, David H. Milteer and wife, Lucy C.
Holland and Anthony T. Holland, and J.K.Holland
and wife shall be filed and made a part of the
record in this case.

-----oOo-----

The further taking of depositions in this case adjourned
until October 29th, 1906.

-----oOo-----

STENOGRAPHER'S TRANSCRIPT.

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1 IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.
2

3 -----*
4 A.J.HOWELL,

5 v.

* Depositions.

6 ALFRED B. CRAMER CO.
7 -----*

8
9 Depositions of witnesses taken before me, D.S.Phlegar,
10 a Notary Public for the City of Norfolk, in the State of
11 Virginia, acting by consent of parties in the County of
12 Nansemond, Virginia, pursuant to agreement, at the office
13 of E.E.Holland, Suffolk, Virginia, April 18, 1907, to be
14 read as evidence on behalf of the defendant in the above
15 entitled cause, pending in the Circuit Court of Nansemond
16 County, Virginia.

17
18 PRESENT:

19 R.W.Withers, for the plaintiff.

20 E.E.Holland and J.U.Burgess for the defendant.
21
22

23 -----oOo-----
24

25 D.S.Phlegar,
26 Shorthand Reporter,
Norfolk, Virginia.

1 A.A.HOLLAND, being duly sworn, testified as follows:

2 Examined by Mr. Burgess:

3 Q. State your name, age, residence and occupation?

4 A. A.A.Holland; occupation saw-milling, farming and so
5 forth; age forty; residence Holland, Virginia.

6 Q. Are you interested in this suit?

7 A. Yes, I suppose so; I am one of the defendants.

8 Q. Mr. Holland, the plaintiff in this suit, A.J.Howell,
9 has testified that he sold you certain timber, and granted
10 three years within which to cut the same; that when the
11 contract was made there was inserted, without his knowledge,
12 words giving two more years, if needed, after the expiration
13 of the three years, in which to cut the timber, by paying
14 six per cent interest on the purchase price. He claims
15 that he did not know that those words were inserted, and
16 that he did not read the contract. Will you please give us,
17 in detail, the entire transaction that took place between
18 you and the plaintiff, beginning when the subject of the sale
19 of the timber was first mentioned, stating the various steps
20 in the transaction, as well as what took place at the time
21 the deed was executed and delivered?

22 A. Well, sir, I saw this man A. J. Howell, He had a little
23 patch of timber of his own, I judge twenty-five thousand feet
24 or thirty thousand feet. I told Jackson that I expected
25 or hoped to buy what little timber there was in that vicinity
26 and wanted his to go with it. Jackson says "You know I have

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D. S. PHLEGAR
SHORTHAND REPORTER
532-588 LAW BLDG.
NORFOLK, VA.

A.A.Holland

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1 no timber to sell; you might have it, if I had any, but
2 what I have is neither here nor there". There was a piece
3 of timber that had been shown me that adjoined his land, and
4 lay just South of what was known as the old Lee path, and
5 contained one hundred acres. Jackson said he had wanted
6 that piece of land for sometime, that it adjoined his, and
7 was right at him, and he ought to have it, and there was
8 another party who wanted it. Jackson said "If you will
9 buy this piece of land, and let me have it, you can reserve
10 the timber on it, provided we can agree on a price". I
11 bought this one hundred acres of land, and went back to see
12 Jackson.

13 Q. Who owned this tract of land at that time?

14 A. T.J.Jones, and I.A.Luke, of Holland.

15 Q. Is this tract of land spoken of by the witness as
16 the Luke and Grath land?

17 A. It is the same, and known as the Louis Jones tract. They
18 bought it from Louis Jones. I agreed to let Jackson have
19 this one hundred acres of land, and reserved the timber
20 on this tract to ten inches, and also that on his own, for
21 which he gave me \$87, as well as I remember - I have not
22 seen or heard of it since - he gave me \$87, and I gave him a
23 deed for the land.

24 Q. What was the consideration for the land?

25 A. I think about \$1.25 an acre. I am not very certain,
26 but I think that is it. I was to reserve the timber on his land,

1 and he was to have the land, and I was to take the timber
2 on his land.

3 Q. After you deeded him the land, and he deeded back the
4 timber to you, as well as his timber, how much was then due,
5 and by whom? A. Due me by him \$87.50, I
6 think, though I have never seen the deed since I sent it down
7 by you to have it recorded.

8 Q. Was this secured? A. I had a deed of trust.
9 Jackson said so far as his little timber was concerned, it
10 was neither here nor there, but he wanted the one hundred of
11 land, and this little spot lay among what I expected to buy,
12 and where I think it ought to be had, and he said, as I just
13 said, so far as what little timber he had was neither here nor
14 there, but if I would sell him the one hundred acres of land
15 I could have the timber to ten inches, which would give him
16 small timber enough to keep up his place. Otherwise, he
17 would not sell it at all. I have been sorry since I gave
18 him the land. Since then nothing has been understood between
19 Jackson about the extension of the two years or the ten inches.

20 Q. Did you have any other conversation with him after you
21 made the deal before the deeds were prepared?

22 A. I don't remember about that. It is very natural that
23 I did. I was there several times, though I am not very
24 sure I had any more talk with him after the bargain was made
25 between us. I do not think very much time elapsed between
26 the time we bargained and the time the deed was fixed up, but

1 Jackson understood the thing clearly.

2 Q. Tell exactly what transpired when the deeds were executed?

3 A. The day the deeds were executed, with Mr. Elihu Joyner,
4 a Notary Public, I went to Jackson Howell's house and others

5 for the same purpose. Mr. Joyner had taken along blank

6 deeds. When we got to Jackson Howell's house he invited

7 us in. I told him my business, which, of course, he knew,

8 and Mr. Joyner sat down, and of course asked each one, as

9 we went along, about the number of acres, the consideration,

10 a d length of time, and each one of us responded whenever

11 it was necessary. After we had finished filling out the

12 deed, as I best remember, he handed it to Jackson for his

13 inspection. That deed was filled out in his presence.

14 The questions were asked us together as to the length of

15 the time it was to be cut, and the height it was to be cut

16 from the ground, and the size.

17 Q. State, if you remember, who responded, and what was said,
18 when the question was asked as to the time in which to cut
19 the timber?

20 A. I could not state that. It is not a matter in which

21 we were supposed to remember. The question was asked us

22 publicly, and one or the other answered, and, of course, both

23 gave our consent.

24 Q. In this transaction a deed was made which was executed

25 by you and your wife to Howell, and a deed of trust was given

26 by Howell to secure you, as well as the timber deeds; were those

1 deeds prepared that day, or had you already prepared the
2 deed which was executed by you and your wife before you
3 went to Howell?

4 A. Those deeds were prepared that day. They were all
5 prepared that day, each and every one of them.

6 Q. And executed by you and your wife after you returned?

7 A. Yes, sir.

8 Q. Who took charge of all the deeds after they were executed?

9 A. I took charge of them, and had them recorded - that is
10 you did.

11 Q. Then, as I understand you, Howell executed the timber
12 deed and the deed of trust, and left it with you to be
13 recorded, along with the deed from you to him?

14 A. Yes.

15 Q. Was there any discussion, or any difference at all,
16 between you as to the time? I mean, was it argued that
17 day?

18 A. Do you mean between the two
and three years?

19 Q. Yes?

20 A. No, sir, there has never
21 been a word said. I could have got more time if I had
wanted it, but there was never a word said.

22 Q. Have you had any conversations with Howell about this
23 deed, and especially about the time between the time the deed
24 was executed and this suit was instituted?

25 A. Yes, sir, frequently.

26 Q. Did he ever say anything to you about the time?

1 A. Howell has talked that thing with me quite a lot. He
2 has been buying timber from me all along since the deed
3 between him and me was made. When he would come to me
4 he would always express great friendship for me in a way,
5 and he spoke of my having sold soon after I did sell to
6 Crocker Bros., and asked if I knew when they were going
7 to start the mill. He spoke about them having shipped a
8 part of the machinery to Elwood, and I told him I supposed
9 that they expected to go to work pretty soon, that all in-
10 dications pointed that way, and, in fact, Mr. Crocker told
11 me that they expected to start pretty soon. He has had
12 frequent talks with me.

13 Q. Did he ever mention any misunderstanding or difference
14 between you as to time? A. Nothing, not one

15 word, and I will say as to that, that last year, in 1906,
16 my books show it was on the 20th day of January I killed
17 hogs. Jackson owed me a balance of two or three dollars
18 on timber he bought the year before, 1905, and while I
19 was killing hogs Jackson came and told me that he owed me
20 a little and wanted to pay me. The subject was brought
21 up then. I asked him if he knew when these parties expected
22 to begin cutting timber, and he said he did not, and he said
23 "Due to the scarcity of labor and so on, it looks like they
24 will not be able to get that out", and I think I told him
25 if they did not soon begin to get it out they would not, be-
26 cause of the scarcity of labor and laying the railroad, and I

1 said "Jackson, you remember you gave me three years, with an
2 extension of two", and I said "The three years is practically
3 out now," and he agreed with me as to everything I said.
4 That was on the 20th day of January.

5 Q. The next witness who testified was Mr. John A. Rawles.
6 He stated that when you first went into the woods he told
7 you that he would not sell his timber to his father and
8 give him five years in which to cut it, but that after agreeing
9 with you on the price and so forth he uses the following
10 language: "Then when Mr. Holland came to sign the contract,
11 or have it filled out, he asked me if I did not remember that
12 the Presidential campaign would come on during that three
13 years, and I told him I did. He said then in case of
14 a money panic during the Presidential Campaign, or depression
15 in the lumber market, how about giving him two years more
16 to cut the timber if it would not justify him to cut the
17 lumber during the panic or Presidential Campaign, and I told
18 him during such a thing I would give him the privilege of
19 two years more, and when he come to fill the contract out
20 I wanted more money. I am a little fast there; those
21 words were to be inserted in the line during a depression
22 in the lumber market during a Presidential Campaign, or a
23 money panic was my understanding." State exactly what
24 was said, as near as you can remember, about the extension,
25 and what were the terms?

26 A. When I first went in to take this matter up, to look the

1 woods over, and see what the people had, it was sometime in
2 the fall or winter of 1902 - the fall, as well as I remember.
3 I went to see Mr. Rawles. He went out to the woods with me,
4 and we went over his woods, or a part of it. When we
5 came out I asked him what he wanted for his timber, and he
6 very readily told me that Mr. Paul Jones, a brother-in-law
7 of his, in whom I suppose he had confidence, who was working
8 for the Camps - he said "I will tell you what he said, that
9 I had two hundred thousand feet," and he wanted \$400 for it.
10 I said "Mr. Rawles, if I can buy this timber, I want to buy
11 here; so far as the price is concerned, we will not fall
12 out about that", but I told him I should want the time to
13 compare on all, and I expected to get three years, and I
14 was willing to pay interest on two more. He spoke standing
15 at the edge of his woods, up against his fence; I remember
16 that place very well, we had just come out of the woods. He
17 said "That means any panic", and I said "Rawles, it means
18 if I want more time."

19 Q. He is the man who made the suggestion?

20 A. Yes, sir, and he is the only party up there who has
21 mentioned the money panic. Sometime after that I asked
22 if he would give me a ten day option on it, and I said "What-
23 ever you say I will depend on it; just give me a verbal
24 option." He said "I will do it at that price, for \$400,
25 for three years and an extension of two, by paying interest,"
26 and I said he would be getting interest anyhow. After one or

1 two or three weeks I saw him, and asked him about this option
2 that he would give me, and he said he would. Before the
3 ten days expired, I met him in Holland, and he told me that
4 Mr. Jonas Lawrence wanted the timber, and he had sent him
5 word that he would give him \$400. I said "Mr. Rawles, con-
6 sider the timber mine; whether I buy anybody else timber,
7 or not, I will take yours." Nothing else passed between
8 us until the day I went with Mr. Joyner to get the deed and
9 pay him for the timber. Joyner filled the deed out in his
10 house, and so far as I know he was satisfied. Nothing
11 was said so far as the two years extension, provided we had
12 a panic, or ever had been, except as I said. He was
13 the only man who breathed such a thing while I was up there.

14 Q. Was anything said about a railroad when the contract
15 was made? A. Not a word.

16 Q. Mr. Rawles testifies on page fifty-two of the record
17 that you said, in reply to the objection of the railroad,
18 that there was no danger of a railroad, that you would cut
19 the timber yourself. As I understand it, you recall no
20 such conversation? A. No, sir. I would like
21 to be right, and tell the truth. Mr. Rawles might have
22 said there was a clause in there providing for permanent
23 railroads, but I don't recollect.

24 Q. The record shows the following questions and answers,
25 on page fifty-two: "Q. Was it (the railroad clause)
26 scratched out? A. No, sir, because I thought he would do what

1 he said he would do, and I was dealing with him fair and
2 square. Q. Mr. Joyner did pass the contract over to you
3 to read, did he not? A. Yes, sir. Q. If you had not
4 taken his word for it, there was no reason why you should
5 not have read it? A. No, there was nothing in the world
6 to prevent me from reading it. I was at home. It is true
7 it was sunset, but I was at home, and they were away from home."
8 Do you recall what was said when the contract was passed
9 over to him to read?

10 A. I don't remember. It was in his house, in his own
11 home. When Joyner began to fill in the parts to be inserted,
12 he knew nothing, and asked as he did others concerning the
13 length of time and the consideration and the size, and we
14 responded, and it was filled in, but more than that I could
15 not tell you. I don't remember.

16 Q. Was anything said about cutting it down to ten inches?
17 A. There was no objection in the world. Mr. Rawles told
18 me just what he would do in the outstart. He told me what
19 he would take ^{for} a certain number of inches. I thought his price
20 was reasonable.

21 Q. Then, if I understand you correctly, when discussing the
22 time in which to cut the timber, at the place you mention
23 on his farm, you asked for three years, with two more years
24 extension, if needed; that then Mr. Rawles said "That means
25 in the event that there should be a panic during the Presidential
26 campaign, or a depression in the lumber market"?

- 1 A. Yes.
- 2 Q. What were your words in reply?
- 3 A. Mr. Rawles this means in case I want more time.
- 4 Q. Did he make any reply to this statement?
- 5 A. He says "I guess we will not fall out about it". I
- 6 said I would pay interest, and it would be no more than
- 7 reasonable.
- 8 Q. As I understand you, when the deed was drawn and
- 9 executed, nothing was said about a Presidential campaign
- 10 or depression in the lumber market?
- 11 A. Not a word.
- 12 Q. But when the time was mentioned, it was stated to
- 13 Mr. Joyner three years with a further extension of two
- 14 years by the payment of interest?
- 15 A. Yes, sir.
- 16 Q. Did you ever talk to Mr. Rawles, after the deed was
- 17 executed, and before this suit was instituted, about the
- 18 contract and time? A. I saw Mr. Rawles in
- 19 Holland, some time last summer or fall, and he asked if I
- 20 remembered just how the contract read. It was not a great
- 21 while before the depositions were taken last fall, and I told
- 22 him I could not, that it had passed out of my mind, and I
- 23 referred him to the Clerk's office, and he never said anything
- 24 more about it.
- 25 Q. The next witness is J.L.Harris, who testified that at the
- 26 time the deed was made he did not remember anything being said

1 about any additional time. He then makes the following
2 statement in answer to a question: "It seems to me that
3 Mr. Holland did mention to me something about money panic,
4 or lumber going down, or something of that kind - if any-
5 thing like that was to happen he would want two years more,
6 or would allow two years more; I remember something about
7 that." He stated that this was not written in the con-
8 tract, but that he agreed in case of a money panic or
9 lumber depression that he would allow you the two years.
10 Tell us what transpired at the time the deed was executed,
11 and what, if anything, was mentioned about a money panic?
12 A. Nothing on earth, not a word.
13 Q. What was said about the time?
14 A. Nothing at all except the time we had already agreed
15 upon, the time the deed shows.
16 Q. Did he raise any objection at all to the extension at
17 that time?
18 A. None on earth.
19 Q. I read you the following questions and answers:
20 "Q. And you stood right behind Mr. Joyner all the time he
21 was drawing the contract? A. He was sitting down, and
22 I was standing up. Q. And you remember distinctly that
23 Mr. Joyner did not insert in the contract any additional time
24 within which to cut the timber? A. I did not see it.
25 (Then omitting one or two questions). Q. I would like
26 for you to answer my question directly. You stated that, as

1 a matter of fact, you saw Mr. Joyner write the contract?

2 A. I saw him write the three years. I was looking at him
3 when he wrote it. It was a blank, and when he got through
4 he halted, and asked the question what time - how much time
5 do you want, and then he spoke and said "One or two years",
6 and Mr. Holland said "Three years, but I am expecting to put
7 the mill there soon, but three years being the custom in
8 writing such contracts." Is this statement correct?

9 A. No, sir, not at all. There is nothing in it.

10 Q. On page sixty-nine the witness was asked the following
11 question: "You were not looking at him (Joyner) when he
12 wrote the balance of the contract? A. My attention
13 was called at the time, and I looked down." He also stated
14 on page sixty-nine that when the contract was executed it
15 was handed to him, and he read it. Do you recall whether
16 or not you read the contract?

17 A. I do not. I could not remember to save my life.

18 Q. Was the contract kept by Mr. Joyner, after it was
19 executed, or did you take it?

20 A. I suppose I took it. I am not very sure how soon, but
21 I am sure I took it, whether that minute or five minutes or
22 an hour after. They were delivered to me as soon as the
23 acknowledgements were taken.

24 Q. What alterations, if any, were made in this contract
25 after it was signed by Harris?

26 A. None in this world. Not a dot that I know anything about.

1 or have any reason to believe.

2 Q. Do you remember what you paid him for the timber?

3 A. I think \$65.

4 Q. The deed shows \$65? A. Whatever the deed
5 shows is right. I think it was \$65. I have not seen
6 these deeds since they were recorded up to the present time,
7 only as they lay on the desk last fall.

8 Q. Have you had any conversation with him after the deed
9 was executed, and before the suit was instituted about this
10 contract, and the time in which the timber was to be cut?

11 A. None at all. I don't remember seeing him until last
12 fall when he was down here and the depositions were taken.

13 Q. The next witness (page eighty-nine) Mr. D.H.Milteer
14 whose testimony is as follows: "When we were coming out
15 (the woods) he said 'There is a Presidential election coming
16 on, and there may be a money panic, which you know sometimes
17 there is; if it should come a Presidential election and the
18 lumber should drop so low it would not do to cut it and sell
19 it, would not you give me more time,' and I said 'I will
20 consider it; if anything should happen we will consider
21 that'". He also stated that he did not agree to have those
22 words about the extension put in the contract. Do you
23 recall this conversation, and, if so, what is your recollection
24 of it?

A. Nothing whatever; not a word.

25 Q. What was said about the extension?

26 A. Nothing at all, only, as I said, the time I wanted three

1 years with an extension of two - just the same as the others
2 and as the others consented to.
3 Q. Was the contract handed to him to read?
4 A. I don't remember whether it was, or not. It is
5 natural to believe it was.
6 Q. The witness testified that you were sitting on one
7 side and Mr. Joyner to the right, and the deed was written
8 in the house, and when Mr. Joyner handed him the contract
9 you said "Hold on, Mr. Milteer, there is one clause in here
10 I will not use; it is for a railroad and cross ties which
11 shall not be put there, and you will never be bothered by
12 a railroad running through the land, I am going to have a
13 mill where I told you, and I will give you a written state-
14 ment showing that I will put a mill at Frank Gordon's gate."
15 Did that conversation take place?
16 A. Not one word.
17 Q. Did you ever agree to put a mill at Frank Gordon's
18 gate? A. Not with him. I had
19 picked out, as I told you, in the fall to put a mill in and
20 work it myself, and I had selected the spot in front of
21 Frank Gordon's gate, and asked his permission to put it
22 there, and he said all right. That was all that was said,
23 so far as the mill was concerned, but I was under no obliga-
24 tions to him. I had made Mr. Milteer some concessions,
25 three thousand feet of merchantable timber, I think, and the
26 stable manure while the lumber was being worked.

Q. Tell us how you came to make concessions?

A. I bought Mr. Milteer's timber, just as I had the other timber, and the day was appointed for me to meet him at his home, for me to give him the money and him to give me a deed, and to my surprise he was the only man who backed out, and I told him the stuff was all small, and I was very much surprised and mortified for him to go back on me. We took a walk together in the woods, and looked over it, and came out, and he made me this proposition - if you will give me three thousand feet of timber and the stable manure, I will sell you the timber as I bargained to do before", and I told him I would do it, and gave him a paper to that effect that day.

Q. Do I understand you to say that at the time you made the contract with Mr. Milteer, that you had already decided to locate your mill at Frank Gordon's gate?

A. That was some time prior to that.

Q. That you had decided to locate your mill there?

A. It was in the fall of 1902.

Q. What was your testimony, or what did you say in regard to the manure?

A. I simply said to him the paper I gave him, that is I would give him a concession; when he failed to do what he said, I told him I would give him the three thousand feet and the manure being made while the timber was being out, and probably something about the mill.

1 Q. I hand you the paper which you gave him. Does that
2 contain your agreement with Mr. Milteer?

3 A. Yes, sir.

4 Q. Then you did mention the location of the mill at
5 Frank Gordon's gate, in that you said you would give him
6 the manure while the mill was located there?

7 A. Yes, sir. I will say with reference to that, the
8 spot designated and so on for the planting of this mill,
9 that after I had sold to Crocker Bros., and even before they
10 bought from me, I told them what my idea was about locating
11 the mill at the point in front of Frank Gordon's gate, as
12 a central point. Mr. Crocker and I agreed on the same
13 thing after I sold him, and he said this was the place.

14 Q. At the time you made the contract, did you contemplate
15 running any railroad yourself?

16 A. Not if I cut it myself, nothing more than a tramway,
17 or bogy track. He expected to locate the mill in the same
18 place I did, and I had some talk with Mr. Crocker about the
19 stable manure, and I knew I could rely on his doing the
20 same as I expected to do myself.

21 Q. The next witness who testified was E.T.Hare, who stated
22 that he never signed the deed which purports to be signed
23 by him, nor acknowledged it before Mr. Joyner. Tell us
24 what contract you made with him, and all that you know about
25 the execution of the deed, that is if executed at all if
26 it was executed in your presence?

A. After I bought this timber, and I think had sold it, or

1 about that time, Elisha Hare and Jim Everett came to see me,
2 and wanted to know if I did not want their timber. Elisha
3 said he owed Mr. Edwards some money, and unless he sold it
4 Mr. Edwards was going to furnish money to cut it in cord
5 wood, and he said if I wanted it he would be glad if I would
6 come to look at it. I told Elisha and Jim that I had sold
7 to Mr. Crocker, but I would be glad to see him, and I saw
8 him and he said he would be glad if I would buy it, and
9 to let him know, and he would send a check, - which I did.
10 I don't remember what I paid each one, but the deeds were
11 given in Crocker Bros'. names, as well as I remember. When
12 I came back - to tell you about the execution of these deeds
13 - when I came back to Holland they came out with me, one or
14 both, and I knew Mr. Edwards had a deed of trust on Elisha
15 Hare, and Dr. Holland on Jim Everett. I gave each man
16 his check payable to the proper party, and gave them each
17 a piece of paper to take to Mr. Joyner's office, and have
18 them execute the deeds, and leave them there. I got the
19 deeds from Mr. Joyner afterwards. I was not present when
20 those deeds were signed.

21 Q. Then you gave Everett's check to him payable to Dr.
22 Holland and Hare's check payable to Mr. Edwards?

23 A. Yes, sir.

24 Q. What was the balance, if you remember, that was due
25 after paying Mr. Edwards debt?

26 A. I don't remember to save my life. I had a talk with

1 each one, and they were both willing to sign the deeds. As
2 what they owed, I don't remember about that, and, in fact,
3 I don't know that I ever knew. I am not sure.

4 Q. When you made the contract, what was said about the
5 time in which the timber was to be cut?

6 A. Just the same time as the others.

7 Q. Give us in words? A. Three years with
8 an extension of two by paying interest.

9 Q. Hare testifies that immediately after he made the sale
10 to you that he went to Norfolk, and that he was not at
11 home on the day the deed was executed. Do you, of your
12 own knowledge, know whether this statement is true?

13 A. I do not. As well as I remember, and I think I am
14 correct, I think just at that time those deeds were executed,
15 just at the time I bargained with them. I do not think two
16 days elapsed. It was attended to at once, and they got
17 the money then and there.

18 Q. J.O.Everett testified that he sold you the timber for
19 \$85; that his deed of trust amounted to \$78, which left a
20 balance of \$7.00, and that he was given an order for this
21 amount which was paid by Mr. Hardy; is that statement true?

22 A. I do not remember to save my life. It has been a long
23 time, and at that time I knew the exact amount of the deed
24 of trust, and it is probable I gave the party who held the
25 deed of trust the amount, and gave Everett the balance.

26 Q. Did either of those witnesses ever come to you, after the

1 deeds were executed, and before the suit was instituted, about
2 the time? A. No, sir, neither one. Elisha

3 came to me last summer to get some timber from me. Neither
4 one ever said anything on the subject.

5 Q. Mr. J. K. Holland testifies on page 145 as follows:

6 "Q. When Mr. Joyner read the contract was Mr. A.A.Holland

7 present? A. Yes, sir, right there in the room. Q. When

8 Mr. Joyner wrote the contract was Mr. A.A.Holland present?

9 A. Yes, sir, he told him how to write it, and he gave him the

10 form to write it on. Q. And you say you told him to write

11 in the contract that he was to have two years in which to cut

12 it? A. Only two years in which to cut and remove the

13 lumber. Q. And that is the way Mr. Joyner read it to you?

14 A. That is the way Mr. Joyner read it to me. Q. Before

15 you signed it? A. Yes, sir. Q. And you and your

16 wife signed it? A. Yes, sir. Q. And he paid the

17 money? A. Yes, sir, gave me a check for it." Is

18 that a correct statement of what transpired at the time the

19 deed was executed?

20 A. No, sir. My understanding with Mr. Holland was exactly

21 as I have said to the others.

22 Q. Tell us the first conversation you had with Mr. Holland,

23 and detail the negotiations which led up to the purchase of

24 the timber and the execution of the deeds?

25 A. The first conversation I had with Mr. Holland was in

26 Holland. He approached me on the subject of some timber being

1 in there for sale, and I told him I would go and look at it.
2 Some weeks passed before I did go, and he was the first man
3 I went to see. He had a streak of mighty pretty stuff which
4 he would not sell me, and I bought a strip through there
5 by the Holy Neck Lumber Company. This piece I wanted he
6 would not sell. I bargained with him for the timber, and
7 my understanding was that he gave me the exact time the deed
8 shows.

9 Q. What was that? A. Three years with an
10 extension of two, if needed, by paying interest.

11 Q. He says that Mr. Joyner, in reading the contract to him,
12 did not read the clause giving an extension of two years; do
13 you remember hearing the contract read?

14 A. Yes, sir, it was read. I remember that. I remember it
15 being read. I very distinctly remember that contract having
16 been read.

17 Q. You heard nothing in reading it which was different
18 from your understanding? A. Nothing in the world.

19 Q. On page 155 Mr. Holland testified that you were telling
20 Mr. Joyner how to write the contract, and in answer to the
21 question: "What did Mr. Holland tell Mr. Joyner to write
22 about the time?" He answered "He told him to write down two
23 years from date, and if not cut and removed in two years the
24 lumber would be mine back." Is that statement correct?

25 A. Joyner had to get his information from both of us, and he
26 asked us, as we went along, how to fill out the deed as to con-

1 sideration, the size and so on, and we both spoke out, after
2 which the deed was read to him.

3 Q. Did Mr. J. K. Holland ever speak to you about having heard
4 that the deed which he gave you gave a longer time than he
5 thought it did?

6 A. Mr. Holland, with Anthony Holland, came to my house -
7 I don't remember when it was, but some time last summer;
8 I was in a hurry to get off on the Seaboard road, going to
9 Boykin. They came to my house, and I invited Mr. Holland
10 in, and he said he did not have time, and I said we would
11 walk down together to the train. Anthony Holland walked
12 with us, and he asked if I remembered the length of time given
13 in which to cut the timber, and I said "Uncle Tony, I don't
14 remember the time," but referred him to the clerk's office.
15 I remember that.

16 Q. Did you say anything to him about being under the
17 impression that he did not give you as long a time as the
18 others?

19 A. I think I did. I remember
20 I said something to this man Job Holland. There were two
21 men up there, and I did not expect to have to repeat the
22 thing, and it occurred to me at that time it was J.K.Holland,
23 but, if I am not mistaken, it turned out to be R.W.Rawles.
24 I knew one or the other had given a shorter time than the
25 others. I spoke hastily, and I did not remember.

26 Q. Is it not true that two of the parties from whom you
bought timber gave a shorter time than the others?

A. Yes, sir.

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A.A.Holland

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1 Q. Who are they?
2 A. J.K.Holland was one, and I think R.W.Rawles.
3 Q. Frank Gordon testifies, on page 181, that he told you
4 his timber to be cut in three years; that after you made that
5 agreement you came to his house one morning when he was in a
6 hurry to go for a coffin for one of his children who had
7 just died; that the deed was presented to him, and that he
8 was assured the timber would be cut in three years, and
9 that you used the following language: "I will insure you
10 I will be here between now and the first of March, and I
11 will cut yours first," and he said upon that assurance he
12 said "I will sign up;" that he then called his wife, and
13 she objected to signing the deed, stating that she had
14 promised never to sign another deed, when you said to her
15 "It is nothing more than to show that I bought Frank's
16 timber, and in case he would die, or anything of that kind,
17 I am to have three years in which to cut and remove this
18 timber", and I told her that was all, and she signed the
19 deed. Tell us about your negotiations with Frank Gordon?
20 A. I bargained with him the day the deed was executed.
21 I went to his house, and he had a dead child in the house.
22 I told him my business, and I told him I would be willing
23 to put it off another day, if he said so, and he said no,
24 come on in. His wife arranged a table, and the deed was
25 signed, and the money was given to him. I think my Uncle
26 Z.T.Holland had a deed of trust on it, but I think I made the

1 check payable to him.

2 Q. What was said as to time? A. Nothing has been

3 said except three years with an extension of two by paying

4 interest.

5 Q. Was there anything said about time that day?

6 A. There was not a word said that day; there was nothing

7 said except giving the deed and paying the money. He made

8 preparation for Mr. Joyner to do the writing, and his wife,

9 or some of them, moved out a table.

10 Q. Did she raise any objection to signing?

11 A. None on earth.

12 Q. How long do you suppose you were in the house?

13 A. I don't know; possibly thirty minutes to three quarters

14 of an hour, or something like that.

15 Q. She testified something was said about cooking for

16 some of the mill hands.

17 A. In the fall of the year, when I was there inspecting the

18 timber, in 1902, when I first begun to look the situation

19 over, and to talk with Frank about his timber, I do remember

20 saying something to her in case the mill was put there whether

21 she would do some cooking, and she said she would be glad to

22 do it, and that was all that was said.

23 Q. A.T.Holland testified on page 200 that he sold you his

24 timber, and when you came with the deed he said "What does

25 all this stuff mean?" And you said "It is a mere matter

26 of form"; that he did not read the deed, and did not want to

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1 read it; that he had implicit confidence in you, and that he
2 relied on the bargain which he had made with you. What
3 was your bargain with him?

4 A. I don't remember about the amount, but the time considera-
5 tion was three years with an extension of two, if needed,
6 by paying interest. I went to see Anthony some time prior
7 to the day of the giving of the deed, and we had bargained
8 as to the price and time, and we had agreed on a day to meet
9 him at home to give the deed.

10 Q. I believe they testified that they were on their way
11 to church; where were they when you got to the house the
12 day the deed was executed?

13 A. It seems to me that they were getting ready to go to
14 church, or some where, if I am not mistaken.

15 Q. Do you remember whether the deed was made out before you
16 got there, or made out afterwards?

17 A. It was made out there.

18 Q. They testified it was not read to them, and it was
19 signed upon your statement that it was the agreement that
20 they had made?

21 A. I don't remember about the reading, whether they read
22 it, or whether Joyner read it, or how it was. I could not
23 recall that to memory.

24 Q. Was there any intention or disposition on your part to
25 mislead any of the parties from whom you bought timber as
26 to the time in which the timber was to be cut?

1 A. None on earth; none in this world.

2 Q. Was there any question in your mind at the time the deeds
3 were executed as to whether or not they were clearly understood?

4 A. None on earth.

5
6 CROSS EXAMINATION

7
8 By Mr. Withers:

9 Q. I understand in your direct testimony you say that A.J.
10 Howell was to pay you some \$87.50, as being the difference
11 between the purchase price of the Luke-Grach land and the
12 timber on both tracts of land?

13 A. Yes, sir.

14 Q. The timber deed from A.J.Howell to A.A.Holland recites
15 that it grants the timber on the two tracts of land in con-
16 sideration of \$600?

17 A. Yes, sir.

18 Q. How was this figure arrived at?

19 A. Jackson Howell told me what he would be willing to pay
20 for the one hundred acres of land.

21 Q. How much was that?

22 A. I don't remember. I told him what I would be willing
23 to give him for the timber on his own land, possibly twenty-
24 five or thirty thousand feet. Then I told him I would reserve
25 the timber on the one hundred acres of land, and if he would
26 give me the timber on his own, I would give him the one hundred

1 acres, and then credit him with the difference. I think
2 \$125 was the consideration of the land he was purchasing
3 from me.

4 Q. Did you not bargain to sell him the land for \$138?

5 A. I don't remember what it was, but some where about
6 that - that is my reserving the timber on my own land, or
7 the one hundred acres I had sold Jackson, and his selling
8 me the little timber on his own land reduced the amount
9 to \$87.50, I think.

10 Q. Does \$138 represent the value of the Luke-Grach land
11 or the Luke-Grach land and the timber thereon?

12 A. No, sir, it never has.

13 Q. What does it represent?

14 A. As I told you, when I bargained with Jackson Howell
15 for the little timber on his own land, he told me unless
16 he could buy the one hundred acres of land from me, that
17 he did not care to sell what timber was on his own land. He
18 insisted I should buy the one hundred acres of land, and
19 sell it to him, as it was contiguous to his land. I
20 told him if I reserved the timber on the one hundred acres,
21 and he would give me his, I would make him a deed and charge
22 him the difference.

23 Q. I want to know how much you valued the timber on his
24 land?

25 A. I suppose forty or fifty dollars.

26 Q. You say you bargained with him to cut the timber down to

1 ten inches?

A. Yes, sir.

2 Q. Howell says your bargain was to cut the timber to
3 twelve inches?

4 A. It has never been anything but ten inches. Jackson
5 said if I would let him have the one hundred acres of land,
6 the one hundred acres would give him enough small timber
7 to keep his farm up, whereas he did not care to sell me
8 any on his home place, unless I would buy this. By giving
9 him a hundred and ten or a hundred and fifteen acres of land,
10 the small timber would justify him in keeping up the place.
11 Nothing has been said between Jackson Howell and myself, ex-
12 cept ten inches. I would not have sold the timber on the
13 Luke-Grach land, if I could not have cut the timber to
14 ten inches.

15 Q. When was the verbal bargain made?

16 A. Some days prior to the time the deed was executed.

17 Q. How many days?

18 A. I don't remember, but not a great while.

19 Q. Do you mean by a great while, two or three days?

20 A. Two or three days, or possibly a week or two.

21 Q. Not to exceed two weeks?

22 A. Only a few days, I think.

23 Q. Were not all of these bargains verbal bargains made
24 about the same time?

25 A. I don't remember about that. There was not a great
26 deal of difference in them, I think.

Q. Practically all one trip?

A. No, sir, not all one trip.

Q. Was Mr. Joyner with you when you made verbal bargains?

A. No, sir, he was not with me until the day he went to take these acknowledgements. He was working for Mr. J.G. Williams at that time, and Williams told me he would let him off. I think he was working for J.G. Williams at that time.

Q. Now, Mr. Holland, tell in your own language what occurred when you and Mr. Joyner came to A.J. Howell's house to secure his signature to the deed conveying this timber?

A. Of course my business was told. He invited us to the house, provided a place for Joyner to do his writing, and then and there the deeds were fixed up, and signed by him and his wife.

Q. Is that all you remember?

A. I don't know that I recall to memory every word that was said. The bargain had been made between us, the bargain for the deed and deed of trust, and the deed I was to give him. We went there to do what was to be done, and the business was transacted in his house.

Q. Can you not remember the details of the transactions of that date more specifically than you have related?

A. I reckon I could.

Q. Please state them?

A. I went in and sat down, and told Jackson Howell our business.

1 I don't remember which deed was made first, how it was done,
2 However, he gave me a deed of trust. I gave him a deed for
3 the land. He gave me a deed for the timber on both
4 tracts - on that of his own and on that of the Luke-Grach
5 tract.

6 Q. Did Howell meet you at the gate that morning?

7 A. I don't remember whether at the gate, but he was at
8 home.

9 Q. Was his wife at home? A. Yes, sir.

10 Q. Was she in the room?

11 A. Yes, sir, he called her in.

12 Q. Was she in the room while Mr. Joyner was writing the
13 contract?

14 A. I don't remember. Jackson
15 called for her, and she was in there.

16 Q. What Jackson say to you when he met you at the gate?

17 A. I don't remember.

18 Q. Did he say anything to you?

19 A. Possibly spoke to me, and invited me in. He certainly
20 understood what I was there for. I had had an understanding
21 with him that he was to be at home that day.

22 Q. When you came up, what did Jackson say as to how long
23 you wanted to cut the timber?

24 A. Nothing was said. It was understood beforehand.

25 Q. Did not Jackson say how long you wanted to cut it when
26 he first met you that morning?

A. Not a word.

1 Q. Did not you represent to Howell that you were going
2 to cut this timber yourself?

3 A. There was not a thing said about it. As I just said,
4 in the fall of 1902, when I contemplated buying the timber,
5 I had no other view except cutting it. I did not concern
6 myself very much, because I knew what the people wanted for
7 it, and thought it was all it was worth. Timber was low.
8 I did not know of any other purpose to put it to except to
9 work it myself.

10 Q. You stated you made a verbal bargain a few days before
11 the date of these deeds, which was the 6th of February; do
12 I understand you to say now you made the bargain with Howell
13 the preceding fall? A. No, sir.

14 Q. What has the situation of the preceding fall to do, is
15 my question?

16 A. What was the question?

17 Q. My question is at the time you made the verbal bargain,
18 and the time you had the written contract drawn up between
19 Howell and yourself, did you not, at that time, represent
20 expressly or impliedly that you expected to mill this timber,
21 that you were going to put the mill at Frank Gordon's gate,
22 and you would only want a certain length of time in which
23 to cut it?

24 A. No, sir, there was not any-
thing said about it.

25 Q. You mean there was nothing said in any manner, shape or
26 form, as to who was to cut it?

A. As I said, in the

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1 fall of 1902, when I started to look at it, I expected to
2 cut it, and running a saw mill on the Seaboard road I
3 expected to manufacture it, and I expected to go to Frank
4 Gordon's gate to put a mill.
5 Q. When did you change your mind?
6 A. I let the matter drop, and did not give myself much con-
7 cern about it, and nobody else bought it, and I went back
8 in the spring of the year, and bought it, I think, some time
9 about the first of February.
10 Q. I infer from some of your previous answers that you
11 bought the timber for Crocker Bros?
12 A. I bought it for myself.
13 Q. When did you bargain with Crocker Bros?
14 A. Only a short time after the deeds were gotten in.
15 Q. Is it not true that you had bargained, or had an
16 understanding, with Crocker Bros. prior to the 6th of
17 February, 1903?
18 A. No, sir, there was
19 nothing of that sort.
20 Q. Can you recall when you had a bargain with Crocker Bros.
21 with regard to this line of timber?
22 A. I don't remember that. My mind has not been refreshed,
23 and I have not asked them how long a time elapsed between
24 the deed to me and the deed to them.
25 Q. Then, on the sixth of February, and prior to that date,
26 your only intention was to buy the timber for yourself?
A. You understand when I went in there in February, it was

1 my intention to buy the timber for myself. About the time
2 I bought it I found I could sell it at a profit, and I
3 decided to clear it up and let the stuff go along. Crocker
4 Bros. were saw mill men, and they selected the same spot
5 as I did.

6 Q. You have not answered my question. What was your
7 intention on the 6th of February with reference to the pur-
8 chase of this timber? Were you buying it for yourself to
9 mill for yourself, to manufacture, or were you buying it
10 knowing you would sell it to Crocker Bros?

11 A. I don't remember the dates. I remember what my in-
12 tentions were on the 6th. I know I sold the timber to
13 Crocker Bros. soon after I bought it.

14 Q. Did you not state a while ago that when you made the
15 agreement with Mr. Milteer, which is filed as exhibit D,
16 and dated the 7th of February, that at that time you under-
17 stood that Crocker Bros. were going to take your place with
18 reference to putting a saw mill at Gordon's gate, and you
19 had an understanding with Crocker, and relied upon their
20 taking your place with reference to furnishing this manure?

21 A. Yes, sir.

22 Q. Then, I understand that on the 7th of February you knew
23 that Crocker Bros. were going to take the timber?

24 A. No, sir. I was negotiating with them at that time, but
25 I do not think a deal had been made between us, and so far
26 as that paper is concerned, I thought I could make satisfactory

1 arrangements with them. About that time, close on the time
2 the deeds were given me, I made the sale to Crocker Bros.
3 I did not feel when I first went in to buy the timber, and
4 continued to look at it, until I found I could buy, and the
5 people had agreed to sell me, I realized the way the business
6 stood that these people came along and offered me a profit,
7 and I decided to let it go, and I did not feel it incumbent
8 for me to go and tell the people.

9 Q. When did they come along and offer you a profit?

10 A. I don't know, but soon after the deeds were given me.

11 Q. Then I understand from you on the 6th of February, the
12 date of the deed, it was your intention to buy the timber
13 for yourself?

A. I don't remember about
14 the dates. I say my intention in the outstart was to
15 work this timber, but later on I decided to sell it.

16 Q. I have asked you if it was your intention on the 6th
17 of February to buy it for yourself, and you say you don't
18 know. I asked if it was your intention to buy it for
19 speculation, and you say you don't know, and I asked you if
20 it was your intention to buy it for Crocker Bros. on the
21 6th of February; can you not be definite and specific as
22 to how you bought this timber from these people, whether for
23 yourself or Crocker Bros?

24 A. I bought it, and paid for it myself. If I could get
25 a profit I would have sold it.

26 Q. At the time you bought it, you bought it for yourself, with-

1 out regard to selling it to Crocker Bros?

2 A. Yes, sir.

3 Q. And with the intention of milling it?

4 A. I took it up, and paid for it, and my intention was
5 to sell it if I could, and if I could not I would go ahead
6 and mill it. I did not feel I should tell the people.

7 Q. Did you not tell Howell and Milteer and Gordon and
8 Anthony Holland, and J.K.Holland, and others, at that time,
9 that you were going to put a mill at Frank Gordon's gate?

10 A. No, sir, there was not a word said about a mill at the
11 gate that day.

12 Q. Does not your contract with reference to the manure with
13 Mr. Milteer state that you were going to put a mill at
14 Frank Gordon's gate?

15 A. No, sir, I did not intend it that way. I intended
16 that if I did not put it there, that Jim Crocker would, and
17 we had had a talk about the manure.

18 Q. Then you had talked with Crocker on this day?

19 A. Yes, but he had made no deal, and I had no way to bind
20 him to make the thing valid. It was mine as it stood.

21 Q. You mean you had not deeded him the timber at that time?

22 A. No, sir, no bargain had been made between us.

23 Q. Was not it perfectly understood between you and Crocker
24 that you were to buy the timber for him, and that you were to
25 sell it to him?

26 A. No, sir.

1 Q. And you allowed these people to continue under the im-
2 pression that you were going to erect a mill at Gordon's gate,
3 and manufacture their timber?

4 A. No, sir. As I told you repeatedly, I went in there
5 in the fall of the year to buy this timber, being invited by
6 Mr. J.K.Holland, to go and look at it. I saw him in Holland,
7 and then I went from one place to the other, and the matter
8 dragged along, and, of course, they would naturally ask me
9 if I expected to put a mill there, and I had no other object
10 except to put a mill there, and as time went along I took
11 it up, about the first of February, and Crocker Bros. came
12 to know about my selling, and I did sell to them afterwards.

13 Q. Do you remember what day you sold to them?

14 A. I don't remember.

15 Q. Was it not about the middle of February, 1903?

16 A. I don't remember; I could not tell you.

17 Q. Will you please read the last part of this manure con-
18 tract with Milteer?

19 (The witness is handed paper marked exhibit D).

20 A. "This covers right to manure all the time the mill is
21 at present location, provided he keeps the stable strawed."

22 Q. Did you not represent to these people that you were
23 going to erect a mill at Frank Gordon's gate, and would begin
24 at once to cut their timber?

25 A. I told them the spot I had selected was in front of
26 Frank Gordon's gate.

Q. The spot you had selected for what purpose?

A. For planting the mill, my preference would be in front of Frank Gordon's gate.

Q. Did you not tell them Frank Gordon's gate was the place where you had selected to erect your mill?

A. I told them the most convenient place for a mill.

Q. And you represented the timber would be cut within a few weeks from that time?

A. No, sir.

Q. Did you not give them to understand that this mill would be erected almost immediately?

A. No, sir.

Q. Did you not say that you expected to cut this timber in one year, and certainly within two years?

A. I possibly told them I would not take longer than that to cut it, and this conversation was in the fall of the year, before February, when the deal was made.

Q. Then you did tell these people it was not expected to take over one or two years in which to cut the timber?

A. I told them it was expected to cut it in the time of one or two years.

Q. You say in the written agreement with Mr. Milteer that he is to have the manure for the next one to two years, and that this contract covers all the time the mill is at its present location?

A. Yes, sir, I think that is the way it reads.

Q. Does not it represent that you expected to put the mill at Frank Gordon's gate, and you expected to cut the timber in one or two years?

A. I don't know. It is intended to convey that Mr. Milteer was to have the manure while the mill was at Frank Gordon's gate.

Q. And that was one or two years?

A. I don't know.

Q. Did not the contract say so?

A. I know what it says. A man might put a mill there, and begin to cut, and it would cut it out in one or two years, and a year like last year, I don't know how long it would take.

Q. Then you represented to these people that this mill would be put at Frank Gordon's gate, and that the timber should be cut in one or two years from that time?

A. No, sir, I did not represent that. The paper was given to Mr. Milteer showing that he was entitled to the stable manure.

Q. I am not talking about the paper?

A. I never told anybody it should be cut in one or two years.

Q. Your answer preceding states that you did represent that the timber should be cut in one or two years; do you wish to change that?

A. I misunderstood you, or you misunderstood me. The

1 timber might be worked under favorable circumstances in one
2 or two years. I meant to say that to you.

3 Q. What did you say to them?

4 A. I stated to them I wanted three years in which to cut
5 the timber, with an extension of two years, by paying
6 interest.

7 Q. And that is all you said to them?

8 A. Yes, sir, and they agreed to it.

9 Q. Now, coming back to A.J. Howell's case: When you and
10 Joyner got in the room, and paper and pen were provided,
11 you said that the paper was the blank form?

12 A. Yes, sir.

13 Q. And that Joyner would read the printed words, and
14 ask both of you for information as to how to fill up the
15 blanks?

A. That is customary.

16 Q. Was that done in this case?

17 A. It was done in this case, and in all cases.

18 Q. Do you recall with what kind of pen Joyner wrote
19 these contracts?

20 A. I don't know; I don't
21 know whether a fountain pen, or whether he picked up pens
22 as he went along. He usually took a fountain pen, but
23 I don't remember about this time.

24 Q. You say as the blanks were reached, you and Howell
25 would supply the necessary data to fill them up; "That
26 Joyner asked each of us as he went along the number of acres,
the length of time, the stumpage, etc." Please state who

1 answered those inquires of Mr. Joyner?

2 A. Both of us responded. Whenever he would ask the number
3 of inches to be cut across the stump, we would respond.

4 Q. Do I understand both responded in chorus?

5 A. Both were there to answer. The understanding had been
6 reached prior to this time, and he understood, and I under-
7 stood.

8 Q. My question is who told Joyner about the terms of that
9 understanding?

10 A. Both of us. It was done
11 in our presence.

12 Q. Do I understand that both spoke the words?

13 A. I did not speak unless it was necessary.

14 Q. It was necessary for some one to speak when these
15 questions were asked, and who answered?

16 A. At Howell's house, Howell and I, and at Milteer's house,
17 Milteer and I.

18 Q. When the blank in the deed with reference to the time
19 of cutting was reached by Joyner, and Mr. Joyner asked how
20 much time are you to have in which to cut the timber, who
21 answered that question?

22 A. Quite naturally I would say "three years, with an ex-
23 tension of two by paying interest; is that right, Uncle
24 Jackson?" That is quite natural.

25 Q. My question is not what would be natural, but to refer
26 to memory alone. If your memory does not serve you, say
so. If it does, say so?

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Q. Now, these deeds were executed in the presence of these parties and myself, as we went along. The bargains had been made between us. We had already bargained prior to the day we went to have the deeds executed. The understandings had been reached, and, of course, as Mr. Joyner would come to a blank necessary to be filled in, as to the time, stumpage and so forth, he would ask for his information from us, just how it was to be filled out, and we would respond.

Q. Then your memory does not include the exact details of who answered the questions, and the language used?

A. I can't remember that I answered the questions, all of them, as to the time, the size, and so forth, or whether Howell did, but together we did.

Q. You know that somebody answered at that time?

A. Yes, sir.

Q. Now, can you remember the exact language that was used in answering that question to Mr. Joyner?

A. No, sir, I don't remember the exact language.

Q. Did you hand the contract, after it was filled, to Jackson, or did Joyner?

A. I don't remember about that.

Q. Did either of you hand it to him?

A. As well as I remember Mr. Joyner did. I would not swear to that, but I think he did. I know it is customary, and I know he generally does.

1 A. These deeds were executed in the presence of these
2 parties and myself, as we went along. The bargains had
3 been made between us. We had already bargained prior
4 to the day we went to have the deeds executed. The under-
5 standings had been reached, and, of course, as Mr. Joyner
6 would come to a blank necessary to be filled in, as to the
7 time, stumpage and so forth, he would ask for his information
8 from us, just how it was to be filled out, and we would
9 respond.
10 Q. Then your memory does not include the exact details
11 of who answered the questions, and the language used?
12 A. I can't remember that I answered the questions, all
13 of them, as to the time, the size, and so forth, or whether
14 Howell did, but together we did.
15 Q. You know that somebody answered at that time?
16 A. Yes, sir.
17 Q. Now, can you remember the exact language that was used
18 in answering that question to Mr. Joyner?
19 A. No, sir, I don't remember the exact language.
20 Q. Did you hand the contract, after it was filled, to
21 Jackson, or did Joyner?
22 A. I don't remember about that.
23 Q. Did either of you hand it to him?
24 A. As well as I remember Mr. Joyner did. I would not
25 swear to that, but I think he did. I know it is customary,
26 and I know he generally does.

1 Q. Did Howell attempt to read it?
2 A. I don't remember about that.
3 Q. Do you remember whether it was read to Howell by you
4 or Joyner?
5 A. It was not read to him by me; I don't remember that it
6 was. I don't remember that it was read to him by anybody.
7 Q. Where was the contract being filled out?
8 A. In which room, do you mean?
9 Q. Yes? A. I did not see but one, and
10 that was the front room, I reckon.
11 Q. When the contract was being filled out, was his wife
12 present? A. He called her in, I don't
13 just remember when, but he called her in and she came in.
14 Q. You say you don't remember whether the contract was
15 read to Howell, or not?
16 A. I do not. I am under the impression that he read it
17 himself. I know it is generally customary for a man to read
18 it himself, when he can read.
19 Q. And you don't remember any conversation after Howell and
20 his wife affixed their signatures to the deed?
21 A. I don't remember. I know the signatures were affixed
22 to the deed for the one hundred acres of land, and for the
23 other.
24 Q. I understand that all the deeds were handed to you, for
25 the one hundred acres and for the timber, and all?
26 A. Yes, sir, that is as I recollect, and I handed them to Mr.

1 Burgess to be recorded.

2 Q. In your direct testimony you stated that Howell came
3 to visit you on January 20th of that year?

4 A. 1906. "January 20th, cash \$2.38." This account was
5 October 1905, 276 feet of red heart lumber.

6 Q. On this day, you say, you said to Jackson "You know you
7 gave me three years with an extension of two more, by
8 paying interest," and then added "I think the three years
9 is about out now;" do I understand you correctly?

10 A. The subject of the time of this timber cutting, and
11 who was going to cut it, was brought up. Jackson had
12 always expressed friendship for me and for my father, and
13 whenever he saw me he would ask about the cutting, and the
14 same that day he asked about it. I don't remember who
15 raised the subject, but I think I said if these people did
16 not get a move on them they will leave some timber behind,
17 because the three years is about up, and Jackson agreed
18 with me, and I did not say a word about them not having any
19 more time.

20 Q. He understood from your conversation that the time in
21 which to cut it, the three years, had lapsed?

22 A. I knew that they had two years more. He knew that
23 they had two years more time by paying interest.

24 Q. You say it was customary for Howell to speak to you
25 about cutting this timber whenever he met you; was not it
26 customary with the other parties likewise?

1 A. No, sir. Jackson did not say anything as to how much
2 time the others had. He asked when the Crockers were coming,
3 about them having machinery at Elwood, and spoke of them
4 having the machinery there, and expected when they would
5 go to work, and the same way with the Cramer Lumber Company.
6 Q. (The last question is read).
7 A. No, sir, they had not done so.
8 Q. You say none other than Howell?
9 A. No, sir, none that I remember had talks with me as to
10 when they would begin to cut.
11 Q. About how many times had Howell asked you when these
12 parties would begin to cut?
13 A. I don't remember, but on several occasions.
14 Q. On these several occasions, did you ever tell them that they
15 had five years in which to cut the timber?
16 A. I don't remember except the time he spoke to me, that
17 I told him of, that it would soon be time for them to put
18 forth some effort, or they would leave some behind, due to the
19 scarcity of labor.
20 Q. Under ordinary circumstances, how long would it take to
21 log this line of timber?
22 A. I don't know. I guess it would take three or four years,
23 the way they are going now.
24 Q. Do you mean that there are some conditions which exist
25 now, which would make the time longer?
26 A. Yes. I was there the other day, and the teams were stand-

ing in the stable.

Q. Have you no idea, from your experience, as to the length of time it would require to log this body of timber - I mean the tracts included in your purchase?

A. I don't know how long it would take.

Q. Could it not be logged and milled in a year and a half?

A. Yes, it could be done in sixty days, or it might take ten years.

Q. I mean by that, if the logging was continued without interruption, could not it be done easily in a year?

A. It depends on the amount of teams and mills.

Q. With the mills such as you contemplated putting there at one time?

A. I don't know just how long it would take.

Q. Do you know about how many thousand feet there are in this body?

A. No, sir.

Q. You say, Mr. Holland, that when you bought this timber from Howell and others, that you bargained to have three years within which to cut and remove the timber, and two more years, if needed, by paying six per cent interest on the purchase price?

A. Yes, sir.

Q. If you cut the timber in the three years, I understand then you would not have to pay interest?

A. I should say not.

Q. Was it your understanding that if the timber were to require four years time, that you would be required to pay

1 how much interest?

2 A. Do you mean to say on the proportional part?

3 Q. Any single tract if it required four years in which
4 to cut it?

5 A. I don't know about that. I should say if it required
6 four years to cut a certain tract, I should pay interest
7 on one year, of course - certainly not for two. That is
8 the way I would look at it.

9 Q. Of course you were not obliged to take the two years,
10 unless you needed it, or unless you wanted it?

11 A. I should not think so.

12 Q. And if you did want it, it would be with you to determine?

13 A. I should think so.

14 Q. It would be at your option to take or to let alone,
15 as circumstances would require?

16 A. That is the way I look at it.

17 Q. Was any effort made to cut this timber within three
18 years?

19 A. None that I know of.

20 Q. Will you kindly file a copy of your deed from A.A.
21 Holland to Crocker Bros?

22 A. Yes.

23 Q. Do you remember a conversation with A.J.Howell, in which
24 he asked you concerning the cutting of the timber, and you
25 replied by asking him about the time, and Howell said to you
26 that they had three years, and that he then asked you if
three years was not right, and you then said you didn't
remember, but referred Howell to the Clerk's Office?

1 A. A.J.Howell?

2 Q. Yes?

3 A. No, sir; A.J.Howell never asked me anything of the kind.

4 Q. You, yourself, related a somewhat similar conversation.

5 Might it not be that both of you were talking about the
6 same conversation from different view points?

7 A. No, sir. I certainly know what I am talking about
8 there. A.J.Howell never asked me anything about the length
9 of time, and A.J.Howell has always understood the time.

10 The conversation at my hog killing bore out that when he
11 said - -

12 Q. Did you not refer him to the Clerk's Office at that
13 conversation?

A. No, sir.

14 Q. You have never directed him to the Clerk's Office to find
15 out about this?

A. Yes, sir.

16 Q. Did you direct any one to go to the clerk's office?

17 A. Yes, sir, J.K.Holland and John Rawles.

18 Q. Why did you refer them to the clerk's office?

19 A. I did not remember how their deeds read. There was one
20 party there who had less time, and I thought it was J.K.

21 Holland. It was a matter of some time, and my mind had not
22 been refreshed, and I said it seemed Mr. J.K.Holland had given
23 a shorter time, and he could find out from the clerk's office.

24 Q. Did not Mr. John Rawles see you about November, 1905,
25 in Holland, and ask you if the time was not about out?

26 A. John Rawles came to me, and asked if I remembered how his

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1 contract read. I was there waiting for the train, and he
2 came and said "Do you remember just how my contract reads,"
3 and I said "I don't to save my life," and I told him the
4 proper place where he might know would be at the clerk's
5 office.

6 Q. Did not Mr. Rawles, at that time, say to you if the man
7 is going to put the mill in in sixty days, he can cut
8 it in three years, and did not he call this wording over
9 to you about how the deed was filled in as to the time,
10 and you said you didn't remember the wording, that it had
11 slipped your memory, and he could go to the clerk's office
12 and find out?

13 A. No, sir. He only had a very few words with me, and he
14 said "Do you remember just how my contract with you read,"
15 and I said I didn't. It has been a long time, and I have
16 not thought about it, and the proper place to find out will
17 be to go to the clerk's office. Of course I have not the
18 original deed.

19 Q. He did not say anything to you about putting the mill
20 in in sixty days, and if so it could be cut in three years?

21 A. Not a word.

22 Q. You say John Rawles agreed with you to give you the
23 three years and two years more, by paying interest?

24 A. Yes, sir.

25 Q. Don't you remember that when Mr. Rawles first took
26 you in his woods, that he said to you, in effect, "Stop right

1 here, and let us have an understanding; if you want more
2 than three years to cut this timber, we need not go any
3 further; that Jonas Lawrence wants to buy it, but he wants
4 five years time, and I would not sell it to my father for
5 five years, and you said to him you did not want it but for
6 three years?"
7 A. No, sir, there was no
8 such conversation.
9 Q. That is positively not true?
10 A. Yes, sir. When we came out I said "Mr. Rawles, what
11 do you want for your timber", and he said Paul Jones, who works
12 for the Camp, had been over it, and he said he had two hundred
13 thousand feet, and he said he wanted \$400. He said "How
14 much time do you want," and I said "I want the time to compare
15 with the other, three years time, and, if needed, two years
16 with paying interest." He said "That means in case of a
17 money panic", and I said "It means if I want more time". He
18 said Mr. Jonas Lawrence would pay him \$400, but he wanted
19 five years, and I said you can give the two years and pay
20 interest, and he said he guessed we would not fall out over
21 it. I saw him a few days after, and asked if he would give
22 an option for ten days, and a few days before the option
23 expired I met him in Holland, and he was going to the station,
24 and he said "My man has sent me word that he would take the
25 timber". I had not bought anybody's timber, and I said "You
26 consider your timber sold; I will take this, whether I take

1 anybody else, or not."
2 Q. Do you remember his saying that he would not let his
3 father have it for five years?
4 A. No, sir, I don't remember a word of it.

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8 At one o'clock the further taking of testimony in
9 this case adjourned until two o'clock for lunch.

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AFTERNOON SESSION

16 A.A.HOLLAND, takes the stand for further cross-
17 examination:

18 By Mr. Withers:

19 Q. When you and Joyner went to John Rawles to get his
20 signature to the contract, do you recall the details of how
21 this deed was signed?

22 A. Nothing more than Mr. Rawles understood our being
23 there, and the deed was executed there in his room, and
24 in his presence, and I gave him a check for the money due
25 on this timber.

26 Q. Where was this deed signed?

A. In his house.

1 Q. In what room?

2 A. I don't remember. I suppose his bedroom.

3 Q. Did Joyner fill out the deed there?

4 A. Joyner filled out the deed, yes, sir.

5 Q. Do you remember-where Mr. Joyner was seated?

6 A. I don't remember; he was seated in the room, but
7 I don't remember where.

8 Q. Was Mr. Rawles in the room when Joyner was writing the
9 deed?

10 A. Yes, sir.

11 Q. Who dictated to Joyner the terms of the deed?

12 A. Rawles and myself.

13 Q. Is your memory about this deed like it was about the
14 Howell deed - you are unable to tell what words were used,
15 and by whom?

16 A. Yes, sir.

17 Q. Do you recall whether the deed was read to Mr. Rawles?

18 A. Mr. Rawles read the deed himself.

19 Q. All of it? A. I don't know. It was handed
20 to him for his inspection. I don't remember about all,
21 but I remember the deed was handed to Rawles.

22 Q. Mr. Rawles testified that Joyner read a part of the
23 deed, and handed it to him, and told him to begin reading
24 at a certain point, after the clause referring to the time.
25 Does your memory contradict or controvert this statement?

26 A. I have no recollection of anything of the kind.

1 Q. Do you remember that it did not happen, or you simply
2 do not remember anything about it?

3 A. I don't remember anything about it.

4 Q. Was there a money panic or depression in the lumber
5 market caused by the Presidential election mentioned?

6 A. I don't remember.

7 Q. Has lumber advanced in price since 1903?

8 A. Yes, sir, I suppose it has. I know it has. There has
9 possibly been some little lull in the market since 1903,
10 but I don't remember just when.

11 Q. If you had placed a mill at Frank Gordon's gate, and
12 had begun a systematic cutting of this timber, is there any
13 reason why it should not have been completely milled in
14 three years?

15 A. I don't know.

16 Q. What do you mean by "I don't know"?

17 A. I don't know of any reason; there might have been.

18 Q. I do not understand your answer. My question seeks
19 to elicit whether such a mill, operated in the usual course
20 of business, would have had any difficulty in logging that
21 woods in three years?

22 A. I don't know about that. It is a right bad woods
23 in there. Running regularly it certainly ought to have
24 been milled in that time.

25 Q. If milled regularly it should have been milled in
26 considerable less time?

A. Certainly in that time.

Q. You have said you told J.K.Holland, Anthony Holland and A.J.Howell and John Rawles about these contracts after they were signed, and probably referred some of them to the clerk's office. Did you not also have a conversation with J. L. Harris with regard to this time of cutting the timber when he asked you if it was not time for these people to come and cut the timber, and asked you if the time was not about out, and you told him to go to the clerk's office, that you did not remember?

A. I do not remember that I have seen J.L.Harris from the day the deed was given me until he was up here last fall.

Q. You simply don't remember?

A. I don't remember seeing him since, and have no recollection of his asking me anything about the contract, or anything else.

Q. Do you not remember J.L.Harris meeting you in the road, and telling you that he had heard that the parties who had bought the timber from you claimed five years instead of three, in which to cut it, and asked you if you did not remember that the deeds read three years, and you replied to him in effect "I don't remember; go to the clerk's office, and you will find the records?"

A. I have no idea of such a thing, and no recollection. I don't know that I have seen Harris from the time the deed was given for the timber, or about that time. He is a man I hardly ever see, and it seems some one told me that

1 he had moved away, but, however, I don't recollect seeing
2 him until here last fall.

3 Q. Did not you tell James A. Howard, a colored man, when
4 you went to look at the timber of John Rawles, that you
5 expected to put a mill at Frank Gordon's gate, and cut that
6 timber?

7 A. I don't remember. It is likely Jim heard me speak
8 of it. He showed me over the woods, being familiar with
9 the lines.

10 Q. Did not you tell R. A. Babb that you expected to put
11 a mill at Frank Gordon's gate and cut that timber?

12 A. It is likely he heard me say so, but I don't remember.

13 Q. Do you recall when the deeds from these parties were
14 recorded?

15 A. From these parties to me?

16 Q. Yes? A. Very soon after the
17 deeds were executed, I think.

18 Q. It appears from the endorsements on them that they were
19 recorded the 24th of February; it also appears that you
20 made a deed to the Crockers on the 23rd of February, the
21 day preceding?

22 A. I suppose some where about that time.

23 Q. I understood in your direct examination that these deeds
24 had remained in your possession from the time they were
25 acknowledged up to the time that they were recorded; is
26 that correct? A. No, sir, I do not remember

1 having told you that. If I did, I did not understand you.

2 Q. I say, in your direct examination?

3 A. I do not recollect how long these deeds were in my
4 possession before they were recorded. Mr. Burgess took
5 them to the clerk's office, and had them recorded, but I
6 don't know how long they were in my or in his possession be-
7 fore they were recorded.

8 Q. How long did you have the deeds?

9 A. I don't know.

10 Q. They were delivered to you by Joyner immediately after
11 he filled the acknowledgements?

12 A. Yes, sir, at once.

13 Q. And they were retained by you until you delivered them
14 to somebody? A. Mr. Burgess.

15 Q. And you don't know how long you retained them?

16 A. It might have been a few days or a week, or longer.

17 Q. Do you recall when you bargained with Crocker to sell
18 him this timber? A. I do not.

19 Q. Do you remember meeting Milteer, in the spring of the
20 same year, in which you bought this timber, when he asked
21 you when you were going to put your mill in and cut the
22 timber, and you answered "Pretty soon"?

23 A. I have no recollection of it whatever.

24 Q. Please explain why the deeds from J.O.Everett and E.T.
25 Hare were made directly to the Crocker Bros?

26 A. I think I explained that this morning, that I had not

1 bought their timber. These parties came to me, and ex-
2 pressed themselves as having felt slighted, that they wanted
3 to sell, and Mr. Edwards had obligated, so Elisha Hare said,
4 to raise money to cut his timber into cord wood, and I told
5 Elisha I had sold, but I would look at it, and buy it for the
6 parties to whom I had sold, Crocker Bros., and Jim Everett
7 also. At their request, I went to look at their timber,
8 and bought it, and had the deeds made in the name of Crocker
9 Bros.

10 Q. Where were you when you bought the timber from these
11 two parties?

12 A. At home, I suppose, attending to my business, wherever
13 it was, but I don't remember. They saw me at home, or
14 about home, and I went over to look at it.

15 Q. You were not present when these two deeds were signed?

16 A. No, sir.

17 Q. Were you present when these two deeds were filled up?

18 A. No, sir.

19 Q. Do you know who dictated the terms of those two deeds?

20 A. I gave a note in the hands of each one of those parties,
21 as well as I remember. They came to my house, and I was
22 busy, and I told them I did not have time to go to Joyner's
23 office, and I gave them a check each, as well as I remember,
24 and after having arrived at an understanding as to the time
25 and size with them, I gave them a writing to show Joyner as
26 to what we had agreed to, and I know nothing more about it

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A.A.Holland

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1 than that.

2 Q. You say you gave them checks?

3 A. Gave them checks payable to the parties who held deeds
4 of trust on their property - one to Dr. Holland and one to
5 Mr. Edwards.

6 Q. May I ask you that you file these checks with your
7 testimony?

8 A. I say that is the very best of my recollection, and
9 I think I am correct.

10 Q. If you are correct, then you would have the checks,
11 and could file them?

12 A. The cancelled checks?

13 Q. Yes?

14 A. I don't know about that. It
15 is likely I may have them, but it is very probable I have
16 destroyed them long ago. These things, after I look over
17 them and get the account balanced at bank, I often burn
18 them. It is possible I may have them.

19 Q. If you have them, will you please file them?

20 A. Certainly. I have no objection.

21 Q. You say you paid J.L.Harris \$65 for his timber?

22 A. I think that is correct.

23 Q. He says you paid him thirty-five. I suppose you paid
24 him by check, too?

25 A. As well as I remember, I paid him at Holland. His
26 deed was executed in Joyner's office, at Holland. I remember
that distinctly, and remember the circumstances that led up
to it. The same day we were out there in that neighbor-

1 hood, if I am not very much mistaken, and I think I am
2 correct, we went to his house that afternoon, and his wife
3 said he was off preaching, and would be back that night, and
4 we stayed and waited until night, and he did not come, and
5 we left word for him to be at Holland the next morning. This
6 deed was given me in Joyner's office, at Holland.

7 Q. Were you present when it was executed?

8 A. Yes, sir. About the amount, it seems to me, if I am
9 not mistaken, I paid him part currency, and a check for the
10 balance. Joyner said something about owing him an account,
11 and wanted to get something out of him when I settled with
12 him for the timber the next morning, and it seems to me
13 I had as much as \$25 in my pocket, and gave him a check
14 for the balance. That is the very best of my recollection.

15 Q. Will you please file this check?

16 A. If I have it.

17 Q. I hand you the deed from Harris to yourself, and ask
18 you to examine the figures showing the consideration, and
19 ask if it does not show that the figures thirty-five have
20 been changed to read \$65?

21 A. I don't know, sir. There seems to be a little scratch
22 there, but what it is I don't know. That is the amount
23 I paid him, to the best of my memory, and I see no reason
24 for any change to be made.

25 Q. Did you dictate the terms of this deed, too?

26 A. Harris and myself.

Q. Do you recall who told Mr. Joyner how to fill in the

space about the time?

A. Not any more than the others. We were both present.

Q. Do you know where Emma Hare appeared before Joyner, and signed and acknowledged these deeds?

A. I do not.

Q. When you went to Frank Gordon's to have the deed signed, do you remember saying to Katie Gordon, his wife, that all you wanted her to do was to sign a paper showing if Frank died you had a right to cut the timber in three years?

A. I have no recollection in the world of it.

Q. Did you not represent to Frank Gordon that you were going to put the mill at his gate, and would cut his timber for the first one?

A. No, sir, none whatever.

Q. When did you tell Frank Gordon you would begin cutting the timber?

A. I don't remember telling him at all.

Q. Did not you tell him it would be about the first of March?

A. I have no recollection. The place of putting the mill in front of his gate was spoken of in the fall of 1902.

Q. Do you recall the circumstances under which Tony Holland signed his deed?

A. I do not.

Q. Do you remember who dictated the terms of that deed?

A. Mr. Tony Holland and myself.

1 Q. Do you recall who stated to Mr. Joyner the time within
2 which you could cut? A. I do not.
3 Q. Do you remember whether J.K.Holland read the deed
4 after it was signed? A. I do not.
5 Q. Do you remember whether it was read to him?
6 A. I don't remember that. If I remember correctly, the
7 deed was read to him, but I am not positive about it, but
8 I think the deed was read to him. I do not think he read
9 it.
10 Q. Do you remember the circumstances under which A.T.
11 Holland, Anthony Holland and his wife Lucy signed the deed?
12 A. When we went up to his house, it seems that they were
13 in the act of going off some where. However, they waited
14 until the deed was properly executed, and I gave them a check.
15 Q. Where were they when they signed the deed?
16 A. There at his house, but I don't remember whether in
17 the house, or in the porch, but I think they were in the
18 act of leaving.
19 Q. Were they in their vehicle?
20 A. The horse was hitched, but I don't know where they were.
21 They were not in the vehicle.
22 Q. Do you remember who dictated the deed?
23 A. Anthony Holland and myself.
24 Q. Your recollection about that is like it is about the
25 balance? A. Yes, sir.
26 Q. Is not it true that at that time you practically had to

1 bargain for his timber, and that the terms were all agreed
2 upon by you?

3 A. That day and at that time?

4 Q. Yes?

5 A. No, sir.

6 Q. The terms had all been agreed upon before?

7 A. Yes, sir.

8 Q. You do not recollect where that deed was signed, nor
9 the situation of the parties?

10 A. I don't remember the position, and all that, but at
11 his house.

12 RE DIRECT EXAMINATION

13 By Mr. Burgess:

14 Q. When you sold to Crocker Bros., you had already made
15 the contracts of sale, had you not, even if the deeds had
16 not been executed?

17 A. Yes, sir.

18 Q. You would not attempt to sell to Crocker Bros. until
19 you had made arrangements to purchase the timber yourself?

20 A. Certainly I would not.

21 Q. Was your sale to Crocker & Brother based upon the
22 price you paid for the timber, or upon their estimate
23 of the amount of timber there? In other words, did they
24 base their offer on what you gave for it, or what they judged
25 the timber was worthy?

26 A. I suppose what they judged the timber to be worth.

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A.A.Holland

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1 Q. Did they, or not, know what price you gave for it?
2 A. I don't know, sir, about that. My impression is that
3 they did know.
4 Q. There are two deeds made by J.O.Everett and Elisha T.
5 Hare, dated the 21st day of March; did they enter at all
6 into your sale to Crocker & Brother?
7 A. Not at all. I merely bought this as an accommodation
8 to all parties.
9 Q. Were you paid for the day, or paid so much for the
10 work you did for Crocker & Bro?
11 A. Mr. Jim Crocker, after I told him about this timber,
12 he said he would appreciate it if I would go and buy it,
13 and send him a bill for my services.
14 Q. What did you charge him for your services?
15 A. I think \$10.
16 Q. For buying both tracts?
17 A. Yes, sir.
18 Q. Then, as I understand it, the only interest you had in
19 these two deeds was the \$10 which you received for purchas-
20 ing the timber for Crocker & Brother?
21 A. For my day's service; \$10 is the usual charge.
22 Q. Then, there was no other inducement for you to defraud
23 J.O.Everett and Elisha Hare?
24 A. None on earth.
25 Q. And, as I understand it, this timber was sold because
26 they had requested you to sell it for them?

1 A. Yes, sir. I should never have gone to look at it,
2 but they came to me, and seemed to think I had slighted
3 them in the purchase of the other.

4 Q. And, as the record will show, these deeds were made some
5 time after the sale to Crocker & Brother had been consummated?

6 A. Yes, sir.

7
8
9 -----oOo-----

10
11
12 J.E.CROCKER, being duly sworn, on behalf of the
13 defendant, testified as follows:

14 Examined by Mr. Burgess:

15 Q. The record shows that you purchased this timber from
16 Mr. Holland. Was your purchase based upon the price that
17 he gave for the timber, or your judgment as to its value?

18 A. I knew nothing about what he paid until I saw the deeds.
19 I based it on my own judgment.

20 Q. At the time these deeds were turned over to you, and
21 A.A.Holland and wife delivered you a deed for the timber,
22 and you paid the purchase price, had you heard any suggestion
23 or intimation whatever that there was any misunderstanding
24 between the parties as to the time in which the timber was
25 to be cut? A. None whatever.

26 Q. When did you first learn that there was any suggestion

1 that the deeds presented to you did not express the agreement
2 between the parties?

3 A. The first I knew that the deeds did not agree with the
4 parties - the date I cannot say, but I think it was in 1905.
5 I will not say positively about that, but you can find the
6 exact date from an extension I got from old man Elisha
7 Holland. I was up there to get an extension on this.
8 This deed read three years, without any extension, and I
9 went to get an extension on this man's land I don't know.
10 Mr. Dick Holland took me out to see this party, and I did
11 not know whether he was a white man or a colored man until
12 he carried me out, and he told me he was the man, and I had
13 the deed with me, and asked whether it was his deed, or not,
14 and he said it was, and I asked him for an extension, and
15 figuring it at six per cent for two years made a little
16 over six dollars, and I gave him \$10. I told him if he
17 would come to Holland the following Saturday I would have
18 an extension deed with Mr. Elihu Joyner. I came back, and
19 Mr. Burgess prepared the deed, and sent it to Mr. Elihu
20 Joyner. That day Mr. J.K. Holland and Mr. Tony Holland
21 came and asked how much more time was on his contract, and
22 I told him I had but that contract with me, and I was unable
23 to say, and I called up Mr. Burgess, and he was not there,
24 and Miss Ruth Marshall came to the phone, and I asked her
25 to read the deed, and she said they had three years, with
26 two additional years by paying six per cent interest, and

1 I told them. I said "If there is anything wrong, you can
2 find it in the clerk's office, as these deeds were all made
3 by Mr. A. A. Holland, and recorded in the clerk's office, and
4 he deeded me the same." That is exactly what I told him,
5 as near as I can remember.

6 Q. What reply did he make when you told him that you were
7 informed that the deed gave three years with an extension
8 of two?

9 A. He said there might be some
10 mistake in it, and I said if there was a mistake he could
11 find out at the clerk's office, that it might be a mistake
12 of Miss Ruth, or my hearing it, but he could find exactly
13 what it was, but that is what I understood.

14 Q. As I understand it, this was the first time you ever
15 heard a suggestion that there might be an error?

16 A. I heard no more until Mr. A.B.Cramer, the people to
17 whom I sold it, were in the act of putting their tracking
18 in there. Nobody else ever complained to me until the
19 deed had been made to A.B.Cramer for some time, but just
20 how long I don't know.

21 Q. When was it Cramer began to put his tracks in there?

22 A. I don't know.

23 Q. It was some time last year, wasn't it?

24 A. Yes, sir, some time last year, I am pretty sure, but
25 I would not say positively.

26 Q. But you are positive that when you took the deed you
had never heard any suggestion at all?

A. Absolutely none.

Q. And when you paid the purchase price?

A. When I paid the purchase price, or for a year or more afterwards. I made a tour up there twice a year to see that nobody pillaged on the land, or cut what did not belong to them.

Q. When you had this conversation with J.K.Holland, did he intimate to you what his understanding of the agreement was?

A. I do not think he did, only he stated it was longer than he expected. He did not make any positive statement to me.

Q. Did he impress you as being confident that he had not made a deed giving that length of time?

A. No, he did not, only in a way, that he might be mistaken, or that I might be mistaken - not positive from the manner in which he spoke to me.

Q. During the time you were making tours through this timber, did you have occasion to talk to any of the owners?

A. As I said a while ago, I did not know the owners. I talked to one or two colored people who lived on the Lee land, and asked whether anybody was pillaging, and whether or not they knew the line, and one or two of them pointed the same lines between me and the John Rawles land, and Parker. I asked him, and he showed me a forked short strawed pine. This man, I would judge, lived there, and I asked him.

Q. When you bought this timber, what did you propose to

1 do with it? A. I proposed to cut it, and
2 to convince everybody of that fact, I had a mill shipped
3 there, and I had two lumber wagons built by Puller & Company.
4 In the meantime, I purchased other timber, and I thought
5 I would have ample time to cut, with the two years extension,
6 but after moving I found I did not have time, and I con-
7 sented to sell to Mr. Cramer, and he had asked me to
8 sell to him a year before, and I had refused him. I found
9 I could not cut both in time, and I agreed to sell to him.
10 Q. Then, I understand, you purchased this timber with the
11 intention of cutting it?
12 A. I did.
13 Q. And, as an evidence of this, you shipped a mill to
14 Elwood, and purchased two lumber wagons?
15 A. Yes, sir. I disposed of these lumber wagons at a
16 sacrifice.
17 Q. And afterwards, having purchased other timber at your
18 then location - -
19 A. Not at the then location, but on the same railroad.
20 Q. - - you concluded you would not have sufficient time
21 to cut both tracts, so you decided to sell to A.B.Cramer the
22 timber in controversy?
23 A. Yes, sir.
24 Q. About what time did you sell to Mr. Cramer?
25 A. I think in 1905, but I will not say positively, because
26 I don't remember the date.

1 Q. At the time you sold to Cramer, did it occur to you
2 at all that it was possible that there was some misunder-
3 standing between the parties who made these deeds and Mr.
4 Holland?

5 A. I had no intimation at all except the conversation
6 which came between Mr. J. K. Holland, and that would not
7 have interfered with my cutting, because he did not act as
8 a man who was positive. It would not have caused me to
9 sell it to anybody.

10 Q. Tell any conversation, if any, you had with any of
11 these parties in regard to their having sold the timber
12 to Mr. Holland, reserving a few trees?

13 A. Some colored man came to me at Holland; I will not
14 say positively it was the same day I had the conversation
15 with Mr. Tony Holland, and he told me that when he sold
16 Mr. A.A.Holland the timber on his land he reserved two or
17 three trees for some purpose, and I told him a matter
18 as small as that would be all right, that I would not ob-
19 ject if he cut them.

20 Q. E.T.Hare, on page 131 of the record, says in answer to
21 a question: "What did you say to Mr. Crocker? A. I told
22 him that I understood that he had bought some timber up there
23 on the Lee track, and he said "Yes," and I went on to tell
24 him that I had sold to Mr. Gus Holland; I was anxious
25 to find out about some trees I had reserved. I did not
26 ask for any agreement with Mr. Gus Holland about it, and he
said any agreement I made with Mr. Gus Holland he did not want

1 to change at all. I saw him after that, but he never said
2 anything to me about the timber. I don't know which it
3 was, but it was a Crocker." Would you judge from this
4 conversation that this was the same man with whom you
5 talked? A. Yes, sir.
6 Q. Did you talk with any other parties about trees reserved?
7 A. No, sir. He told me that he had two or three trees
8 reserved, and I told him I did not have the deed, but we
9 would not have any trouble about it.
10 Q. Did you tell him if the deed called for them?
11 A. I told him if the deed called for it it would be all
12 right, and if it did not we would not have any falling out
13 about it.
14 Q. When he spoke to you about the trees, did he say anything
15 about not signing the deed? A. No, sir.
16 Q. Did he seem surprised when you told him you had a
17 deed? A. No, I never found any one
18 surprised.
19 Q. I ask you specially, for the reason that Hare testified
20 that he never gave a deed, that the signature or name on the
21 deed purporting to be from him was written by some one else
22 other than himself. Would you draw this inference from
23 your conversation?
24 A. No, I would not. If he had not sold his stuff, I would
25 not think he had a right to reserve his trees.
26 Q. In other words, you mean if he had only made an oral

- 1 agreement, which had not been carried out by a deed, that
2 the oral agreement reserving the trees would have been as
3 strong as the agreement selling the timber?
4 A. Yes. If the reservation was good, the title ought to
5 be.
6 Q. So you do not think that he appeared to be at all sur-
7 prised when you mentioned the deed?
8 A. No, he seemed to be very well satisfied when I told
9 him he could still have the trees.
10 Q. How long have you been in the lumber business?
11 A. I have been in it for myself about thirteen years.
12 Q. During that time have you bought much timber?
13 A. Some little bit - right much, yes.
14 Q. You have been actively engaged in the saw mill business
15 the last thirteen years?
16 A. Yes.
17 Q. Are you familiar with the general terms of timber deeds
18 and timber contracts?
19 BY MR. WITHERS: The question is excepted to.
20 A. I am in North Carolina.
21 By Mr. Burgess:
22 Q. What is the usual custom, or what is the usual price,
23 paid for extensions?
24 BY MR. WITHERS: The question is excepted to as
25 irrelevant and immaterial.
26 A. We always make a limited time with an extension by paying

1 six per cent interest on the purchase price. We always
2 try to get that clause in.
3 By Mr. Burgess:
4 Q. Assuming that a fair price is paid for the timber at
5 the time of sale, what do you consider a reasonable amount
6 to be paid as a yearly extension for a limited time?
7 BY MR. WITHERS: The question is excepted to.
8 By Mr. Burgess:
9 Q. Say the timber sold for a reasonable price for five
10 years, what would be a fair price for an extension of two
11 years? A. As I say, we usually pay six
12 per cent.
13 Q. Do you think that is reasonable?
14 A. Yes, sir. I am paying six per cent on some stuff now.
15 Q. So far as you know, is not this the customary method
16 of buying timber to-day?
17 A. Get all you can for as little as you can on as long
18 time as you can. That is my policy.
19 Q. That policy also applies to the owner of the land?
20 A. They are always a plenty high.
21 Q. But the two parties in their efforts to get all they can,
22 quite frequently agree on six per cent on the purchase
23 price, do they not.
24 A. For any extension.
25
26

CROSS EXAMINATION

By Mr. Withers:

Q. Mr. Crocker, alluding to your last answers, you say you have bought considerable timber on which you have the right of extension by paying six per cent interest; have you sold any and granted the purchaser an extension by paying six per cent interest where you did not have to do it by reason of your former contract?

A. I do not understand you.

Q. You say you have bought timber with the privilege of extension of time by paying six per cent interest. Have you ever sold any standing timber which was absolutely yours for all time, and granted the right of an extension by receiving six per cent?

A. No, I do not have any land.

Q. Alluding to the conversation you had with Miss Ruth Marshall over the telephone, in the presence of J.K.Holland and Dick Holland - -

A. The conversation I had with her was not in the presence of him.

Q. He was not there? A. Not at the time I was talking with Miss Ruth. I came back and told him.

Q. Where was the telephone?

A. The telephone is Mr. Joyner's. I walked in, and asked the use of the telephone, and that is where I telephoned from.

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1 Q. Where were Mr. Dick Holland and J.K.Holland?

2 A. Close to the hotel.

3 Q. And you came back from the telephone, and reported the
4 conversation? A. Yes, sir.

5 Q. Mr. Dick Holland was present?

6 A. Yes, sir.

7 Q. And the reason you telephoned was to ascertain how
8 much time J.K.Holland had granted to cut the timber?

9 A. Yes, sir, and see if I had overlooked any contract
10 that did not grant an extension.

11 Q. Do you recall when this was?

12 A. I think January or February, 1905. The date of the
13 extension will show. Mr. Burgess may have made the date a
14 little later, but it was the Saturday previous to that I
15 made the extension.

16 Q. You say when you came back and reported to Mr. Holland,
17 he expressed surprise, and said there must have been some
18 mistake? A. I do not know that he expressed

19 so much surprise, but he said there must have been some
20 mistake, and I said if there was it must have been with me
21 or. Miss Ruth.

22 Q. And you told him you were not certain of it?

23 A. I was not absolutely certain.

24 Q. That Miss Ruth might have misread it, or you misunder-
25 stood her? A. Yes.

26 Q. But when it was reported to him that his deed read three

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1 years, with an extension of two, he said it was a mistake,
2 and you replied it might be that you did not understand, or
3 that she made a mistake?
4 A. No, I did not tell him she misread it.
5 Q. So you were not sure that your statement was absolutely
6 correct? A. No, sir, absolutely I was not.
7 To satisfy my own mind, when I came home I looked the deed
8 up, and found the mistake was with Mr. Holland, and not
9 with me.
10 Q. Did you not report to J.K.Holland, in the presence
11 of Dick Holland, at the time of this telephoning, that he
12 had granted two years in which to cut the timber?
13 A. I did not.
14 Q. When you saw E.T.Hare, in Holland, in winter of 1904
15 or 1905, whenever it was, you say he spoke to you about
16 having sold the timber to Mr. Gus Holland?
17 A. I don't know whether I saw Mr. E. T. Hare.
18 Q. You testified that you spoke to a colored man?
19 A. Yes, but whether that is Mr. E. T. Hare I could not
20 say, but the man I saw said he had sold his stuff to Mr.
21 A.A.Holland, and had reserved, I will not say how many,
22 but just a few trees - two, or three or four, and probably
23 five, and he asked me about that, and I told him a few
24 trees like that, we would not have any dispute over.
25 Q. Did he say anything about having sold it by a deed?
26 A. No, he did not say what he sold it by.

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1 Q. He said he sold his timber to Mr. A. A. Holland?
2 A. Yes, sir.
3 Q. And he had heard you had bought from Mr. Holland?
4 A. Yes, sir.
5 Q. And he wanted to know if Mr. Holland had told you about
6 certain trees being reserved?
7 A. He wanted to know if I would do the same thing Mr.
8 Holland had promised to do. I told him if it was only a
9 few trees, regardless of whether it was in the deed, that
10 we would not have any falling out about it.
11 Q. Do you recall whether you said "in the deed"?
12 A. We buy by deed.
13 Q. You are surmising. Do you recollect saying to him the
14 exact words you here repeated?
15 A. That it was in the deed?
16 Q. Yes? A. I feel pretty confident
17 that I said "in the deed."
18 Q. In what deed? A. In the deed the man bought
19 it from him by.
20 Q. Do you mean in the deed from Mr. Holland to you?
21 A. No, in the contract he had with Mr. Holland.
22 Q. Is not that just what you said, whatever agreement
23 you had with Mr. Holland you did not want to change it
24 at all? A. I did not say that.
25 Q. You are positive you did not say that?
26 A. Nothing was said about the deed between him and Mr.

1 Holland.

2 Q. Nothing was said about the deed between him and Mr.
3 Holland? A. No, sir.

4 Q. What deed are you talking about?

5 A. I was speaking about the deed between him and Mr.
6 Holland. He did not say anything about the deed between
7 him and Mr. Holland.

8 Q. Is not it true that the man came to you, telling you
9 that he had sold the timber to Mr. Holland, and wanted
10 to know if Mr. Holland had said anything to you about cer-
11 tain trees you had reserved, and you replied to him any
12 arrangement that Hare had made with Mr. Gus Holland you
13 would not seek to change at all?

14 A. I did not say that.

15 Q. Words to that effect? A. I told you exactly what
16 I said. I told you that he told me that he had made an
17 arrangement with Mr. Holland that a few trees would be
18 reserved, and I said if it was only a few trees, whether
19 it be in the deed, or not, we would not have any dispute over
20 it.

21 Q. And you undertake at this time after the lapse of
22 this time to say that that is the exact language?

23 A. I would not say those are the exact words, but I
24 recall that he said something about it, but that is the basis
25 of the whole thing.

26 Q. The idea being that whatever arrangements with regard to

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1 reserving the trees, you would carry it out?

2 A. Yes, sir. A few trees were the only things in con-

3 troversy between him and I.

4 Q. Were you present when these deeds were made by Hare

5 and Everett to Crocker Bros?

6 A. I was not.

7 Q. Do you know when and how they were made?

8 A. Only from the date of the deed.

9 Q. When did you buy the timber from Mr. Holland?

10 A. I think I told you a while ago I could not recall the

11 time, only from the date of the deed.

12 Q. The deed is dated the 23rd of February, 1903?

13 A. That must be right.

14 Q. He gave you a deed the day you sold it to him?

15 A. The day I paid him for it.

16 Q. When did you bargain for it?

17 A. We bargained previous to that.

18 Q. How much previous? A. I would not say positively,

19 but about the time it would take to get the deeds on re-

20 cord.

21 Q. The deeds to Holland were not recorded until after

22 Holland had made you a deed for the timber?

23 A. I did not say that.

24 Q. I say that. A. The deed don't show that.

25 Q. They do show it?

26 A. Put it again, and let me understand it a little better.

The deed to me was after he had had these recorded. I will

1 not say about recording them, but after Mr. Burgess had
2 accepted them. I don't know when they were recorded, be-
3 cause I am not in position to say that, but this deed I
4 got from Mr. Holland was after Mr. Burgess had approved
5 of these deeds.
6 Q. I was asking you when you bargained with Mr. Holland
7 for this line of timber?
8 A. I can't give the date.
9 Q. You have said it was some time prior to the date of
10 his deed to you, which was the 23rd of February?
11 A. It was earlier than that, because he would not have
12 given the deed until I had bargained.
13 Q. Do you recall how long you had been negotiating with
14 him? A. Only a short time, probably a
15 week or ten days. I do not think it would exceed ten
16 days.
17 Q. What conversation had Mr. Holland with you with reference
18 to the manure which might be made at a saw mill to be located
19 near this property?
20 A. I asked Mr. Holland to withdraw from a certain line
21 of territory, and not buy anything else so as to give me
22 a certain line of territory. He said I want to ask a
23 favor of you that is not in the contract, and he says when you
24 put your mill up there, would you mind giving Mr. Milteer
25 the manure from your stable, and I told him when I put the
26 mill there if he will litter the stable.
Q. When was this conversation? A. After I had bar-

1 gained with him for the timber, but I think before he had
2 given the deed to me.
3 Q. Was that before he had gotten the deed from these other
4 parties? A. I don't know.
5 Q. He got the deeds about two weeks before?
6 A. I said we bargained about a week or ten days before.
7 Q. You don't know when he bargained with these other
8 people? A. No, sir.
9 Q. Or when he got the deeds? A. No, sir.
10 Q. Or whether you had the conversation about the manure
11 before or after he got the deeds from these other parties?
12 A. No, sir. It was when I bargained with him.
13 Q. Then you don't know whether you bargained with him be-
14 fore or after he got these deeds from these other parties?
15 A. I don't know whether I bargained with him, but I know
16 we did not put up any money for it until after we got our
17 deeds.
18
19 -----oOo-----
20
21 D.J.DAUGHTREY, being duly sworn, testified as
22 follows:
23 Examined by Mr. Holland:
24 Q. State your name, age and residence?
25 A. D.J.Daughtrey; age fifty-two; residence Holland,
26 Nansemond County; occupation - I don't hardly know, but you

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D.J.Daughtrey

1 might call it railroading.
2 Q. What money interest, if any, have you in the result of
3 this suit? A. Not a cent in the world.
4 Q. Mr. Daughtrey, have you ever had any conversation with
5 Mr. D.H.Milteer with reference to this timber? If so,
6 please state when you had it, and where you had it, and
7 what the conversation was?
8 A. Me and him have talked about it right smart along
9 first one place and then another, but it has been a year
10 ago, I suppose. It was some where last year me and him
11 were talking about the lumber up there, before I had any
12 idea of working for the company at all. He told me about
13 the way he had sold his timber, and so on. He told me
14 that he had sold his lumber to Gus Holland with three
15 years to cut it in, and two years extension, by paying
16 interest on the purchase price of the first bargain of the
17 lumber. I never heard any more after that at all until
18 I reckon five or six weeks ago - some time in March - Mr.
19 Milteer come out on the road where I was cutting out the
20 roadway on his place, and I told him I hoped he would not
21 have any hard feelings towards me, that I was working for
22 the Cramer Company, and he said not at all, and I mentioned
23 to him about the tie timber, and he said they had a right
24 to cut any timber they chose down to ten inches, but below
25 that they did not, and he should not open his mouth, that
26 he wanted them to go and cut what they were going to cut, and

D.J. Daughtrey

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the balance would be his.

Q. Do you know anything else about the matter at all?

A. I don't know that I do.

CROSS EXAMINATION

By Mr. Withers:

Q. Mr. Daughtrey, do you now work for the A.B.Cramer Company in logging this timber?

A. I am running the track for them, yes, sir.

Q. When was this conversation with Mr. Milteer?

A. Some time last year, but I could not recollect when.

It was, say, before I commenced to work for them. I reckon it was some time in the fall or in the summer. It was some time last fall. I never expected to hear anything more of it.

Q. You mean by last year, 1906? A. Yes, sir.

Q. Probably in the summer or fall of 1906?

A. Yes, sir, but I could not recollect the very day, because I never expected to hear anything about it. Probably it was before they first started this suit.

Q. This suit began in June or July; it was before that?

A. I never heard of this stir-up before we were talking about it.

Q. It was certainly before last March, was it?

A. Oh, yes, sir, but I could not recollect when it was.

1 Q. Did not he say that the deed read that he had sold
2 the timber for three years, or two years?

3 A. That is the way Mr. Milteer spoke it to me, that he
4 had sold the timber to Gus, with the confidence in him
5 that he would cut it off in three years, or more, if
6 necessary, but he expected it would be cut in eighteen
7 months, when he first sold it to him.

8 Q. Where was this conversation?

9 A. In Holland.

10 Q. Under what circumstances was this matter alluded
11 to? A. I don't know.

12 Q. You can't recall all the conversation?

13 A. No, sir, I could not tell it right along from memory
14 to save my life. I know the day he came to me, and we
15 spoke about the tie timber - I think he said about the
16 tie timber, and he said the contract called for all
17 necessary timber, and such, and as that Mr. Holland said
18 it was not more than a form, and that Mr. Gus Holland
19 said he was going to cut it himself.

20 Q. Do you recall a statement made by Mr. Gus Holland
21 at the time you were up at a saw mill at Mr. Bob Daughtrey's,
22 with reference to the time in which he had to cut the
23 timber off J.K.Holland's land?

24 A. Mr. Holland told me that the time would soon be out
25 on all the timber, and if the fellows would lie easy the
26 time would be out on all. He did not call Tony's name
more than the others.

1 Q. What time was this conversation?
2 A. It was in May, because I put down his saw mill in May,
3 twelve months ago this coming May.

-----oOo-----

7 JOHN NORFLEET, being duly sworn, testified as
8 follows:

9 Examined by Mr. Burgess:

10 Q. Mr. Norfleet, have you ever had any conversation with
11 Mr. J.K.Holland in regard to this timber deed which he made
12 to Mr. Gus Holland? A. Only once, Mr. Burgess. I
13 walked in Mr. J.C.Bell's saloon.

14 Q. When was that? A. Just before Christmas, as
15 well as I remember.

16 Q. Just before Christmas, 1906?

17 A. Yes, sir. Mr. Holland was in there, or Uncle Tony,
18 as I always call him. He was about ready to take a drink,
19 just as I went in there, and Mr. Bell did not sell shoes,
20 or clothes, or anything of that kind, and I was going to
21 take a glass of beer, and he asked me to take one on him,
22 and I told him I did not like to do a thing of that kind,
23 to come in on a man, and we talked about things around home,
24 and he finally brought up this timber question, and he spoke
25 of how much he thought of Mr. A.A.Holland, and he was sorry
26 this thing had come up, and I had heard some talk of it,

1 people travelling around, where the timber was bought. I
2 said I am sorry for it; what is the trouble. He said the
3 only thing he knew about it was that Mr. Holland had three
4 years with two years interest, and I took a drink with
5 Uncle Tony, and came out and left him. I took a glass of
6 beer, and he paid for it.

7 Q. If I understand your testimony correctly, you went
8 in, and he asked you to take a drink, and he brought up the
9 matter of these deeds, and you asked him what was the trouble
10 about them, and he said he sold the timber, and gave three
11 years in which to cut it, and two years extension by paying
12 interest; is that correct?

13 A. That is the idea.

14 Q. Did he say how much interest?

15 A. He did not mention the interest at all.

16 Q. Are you positive he said an extension of two years by
17 the payment of interest? A. Yes, sir, two years.

18 Q. Did you know at that time the difference between them?

19 A. No, sir, I had heard of other people, but with Mr.
20 Holland I had heard nothing at all.

21 Q. That was the only conversation?

22 A. Yes, sir, just a friendly talk.
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John Norfleet

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CROSS EXAMINATION

By Mr. Withers:

Q. This was Christmas, 1906? A. As well as I remember.

Q. Long after the suit was begun?

A. I don't know anything about when the suit was begun.

Q. You were taking the drink, and he said he was sorry about the trouble about the timber?

A. Yes, sir, he did.

Q. And I understood your direct statement to be that you said to him "What is the trouble about the timber?"

A. That is the idea.

Q. And he said Gus Holland had three years in which to cut the timber, and two years more by paying six per cent. interest?

A. I did not say what the interest was to be. He said "with interest".

Q. When you said "What is the trouble", and he said "Gus Holland has three years in which to cut the timber and two years more by paying interest"?

A. Yes, sir.

Q. He was telling you the difference between them?

A. Yes, sir.

Q. That is what he was complaining about?

A. I don't know anything about it.

Q. That is what he was telling you?

1 A. He said he had two years on interest. I did not know
2 anything about it.

RE DIRECT EXAMINATION

6 By Mr. Burgess:

7 Q. Are you positive he said that he had given Mr. Holland
8 three years with an extension of two years, or did he say
9 Mr. Holland claimed three years with an extension of two?
10 The distinction is this, whether he said Mr. Holland was
11 claiming it, or whether he gave it?

12 A. No, sir, he did not claim it. He said the trouble was
13 that he had three years to cut it, with an extension of
14 two years. I do not say the amount of interest he was
15 to pay. I took a glass of beer and went out.

17 -----oOo-----

19 SAM HARDY, being duly sworn, testified as
20 follows:

21 Examined by Mr. Burgess:

22 Q. Did you ever have any talk with J. Frank Gordon about
23 a timber deed that he gave to Mr. Gus Holland?

24 A. It was the deed left on the desk in the store for his
25 timber. Frank owed something in the store, which he had
26 never paid. As he had never paid it, seeing this I felt

1 interested in it if I would get something out of it. When
2 he came in I asked him about it, and read it, and said
3 what about paying me, and he said "I would pay you if I had
4 it, but this don't go to me, but to the man who had the
5 deed of trust."

6 Q. How come you to read the deed?

7 A. Curiosity.

8 Q. Did he ask you to read it?

9 A. Yes, sir, he asked me to read it.

10 Q. Did you read it to him?

11 A. Yes, sir.

12 Q. How about the clause about the time?

13 A. Three years time, two years extension.

14 Q. You are positive that was in the deed?

15 A. Yes, sir.

16 Q. What did Frank Gordon say when you got to that?

17 A. Not a thing, only I asked him how about paying me some
18 money, and he said he would pay it if he had it, but he said
19 every cent went to the man who had a deed of trust.

20 Q. But you are positive you picked the deed up, and he
21 asked you to read it to him? A. Yes, sir.

22 Q. And he never said anything about the extension?

23 A. No, sir, or the interest, or anything else.

24 Q. Have you ever had any business transactions with Elisha
25 T.Hare? A. Yes, sir, for sixteen or

26 seventeen years.

Q. During that time, have you ever seen his signature?

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Sam Hardy

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1 A. Yes, sir, many times.

2 Q. How would you see it? A. I have carried bank

3 notes with the Farmers Bank, and with Mr. Z.T.Holland.

4 Q. How many times have you seen his signature?

5 A. I don't know, but many a time.

6 Q. I now hand you the deed purporting to be from E.T.

7 Hare and wife to J.B.Crocker & Pro., dated the 21st day

8 of March, 1903. This deed is also signed by A.Edwards?

9 A. I know his signature, too.

10 Q. And is acknowledged before Elihu Joyner, N.P?

11 A. I know his signature, too.

12 Q. Will you tell me if that is the signature of E.T.Hare?

13 BY MR. WITHERS: The question and answer are

14 excepted to, as it has not been shown that this

15 witness is a competent witness to give his

16 opinion as a handwriting expert, or to testify

17 as to what he knows about the handwriting, or

18 that he is a competent witness to testify upon

19 this subject.

20 A. Yes, sir, it is E.T.Hare's signature.

21 By Mr. Burgess:

22 Q. Is it, or is it not, written as you have seen it?

23 A. Yes, many a time, and I have seen his wife's, too, many

24 a time.

25 Q. Tell us if that is his wife's signature?

26 A. She has sent orders to the store many a time, and this

is her signature. That ain't all, but they told me they had

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sold the timber.

Q. When did they tell you that they had sold the timber?

A. They admitted that they had sold it, but said the money went to the man who held the deed of trust.

By Mr. Holland:

Q. How long have you known James O. Everett?

A. Seventeen years - ever since my stay at Holland.

Q. Have you ever seen him write his name?

A. Many a time.

Q. Are you familiar with his handwriting?

A. Yes, sir, very much.

Q. I now hand you a deed purporting to be signed by J.O. Everett and Job G. Holland, dated the 21st day of March, 1903. Please examine the signature of J.O. Everett, and say whether or not, in your opinion, he signed it?

A. Yes, sir, J.O. Everett signed it, and Job G. Holland signed it.

Q. What, if anything, have you ever heard Everett say as to whether he sold his timber?

A. That he would pay me, but the money went to the man who held the deed of trust.

Q. Was it upon the statement that he had sold his timber?

A. Yes, sir. I told him I had heard that he had sold his timber, and he said "Yes, and I would pay you, but it went to the man who held the deed of trust," and I said "Doggon you and Doggon the deed of trust."

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1 Q. Do you know the general reputation, for truth and ve-
2 racity, of J.O.Everett?

3 A. So far as the veracity part, I don't know about that,
4 but as to paying his debts, I know he has never done that.

6 CROSS EXAMINATION

8 By Mr. Withers:

9 Q. Are you familiar with the signature of Emma Hare?

10 A. Yes, sir.

11 Q. Is that her signature?

12 NOTE: The witness is shown exhibit M.

13 A. No, sir. It is not like I have seen her write orders
14 at the store.

15 Q. Is this Emma Hare's signature?

16 NOTE: The witness is shown exhibit M, written
17 in pencil.

18 A. No, sir.

19 Q. You say she did not write this?

20 A. I don't say she did not write them, but it is not like
21 she used to write orders at the store. But they sold the
22 timber, and acknowledged that to me, and got the money for
23 it. They are a doggon set of cranks to want it twice.

24 Q. Whose signature is this (exhibit J)?

25 A. What is it? Whose signature is it?

26 Q. That is my question to you? A. I don't know.

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Sam Hardy

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1 Q. You could not tell whose handwriting it is?
2 A. No.
3 Q. You could not identify that in any way?
4 A. No, sir. Who is the signature for?
5 Q. I cannot answer you. Do you recognize this signature
6 (exhibit H)? A. No, sir, none of it.
7 Q. Do you know who wrote that?
8 A. That I don't know.
9 Q. Can you tell from the handwriting?
10 A. No, sir.
11 Q. Are you familiar with this handwriting?
12 A. No, sir. Are you?
13 Q. Then, you don't know whose signature it is?
14 A. No, sir, It looks like a "Y" in one place.
15 Q. You have said that you read the deed from Frank Gordon
16 and wife to A.A.Holland? A. Yes, sir.
17 Q. When was this? A. I don't know. It was
18 left on the desk, and I read it. I did not take any dates
19 down. I was after my money.
20 Q. By whom was it signed at that time?
21 A. Joseph F. Gordon.
22 Q. Who else? A. I don't remember.
23 Q. You don't know whether it was signed by anybody else,
24 or not? A. I don't remember.
25 Q. Was the certificate of acknowledgement filled out?
26 A. I don't remember that.
Q. Do you recall any of the provisions of this deed?

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Sam Hardy

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1 A. I remember the terms on it.
2 Q. What were they?
3 A. Three years to cut it in, two years extension with
4 interest.
5 Q. Do you remember any terms? A. No, sir.
6 Q. You don't remember the date? A. No, sir.
7 Q. You don't know who it was signed by?
8 A. Joseph F. Gordon.
9 Q. You don't remember anybody else?
10 A. No, sir.
11 Q. You don't know whether the certificate was filled out?
12 A. No, sir.
13 Q. And you don't remember any terms in the deed except
14 three years to cut it in, and two years extension, with
15 interest?
16 A. What are you hammering at?
17 Q. What did he get for the land?
18 A. Something like \$140 or \$150.
19 Q. How was the land described? A. I don't know. I
20 was after money.
21 Q. How many acres of land? A. I don't remember
22 that. I had nothing to do with that.
23 Q. How much deed of trust was on the land?
24 A. I don't remember that.
25 Q. Did not the deed state? A. I don't remember that.
26 I was simply looking at the amount, and how much I could get.

1 Q. Will you state from your recollection the exact language
2 of this deed in which it refers to the time in which it might
3 be cut? A. Three years, two years extension,
4 on interest.

5 Q. I ask you to give me the words - -

6 A. No, sir, I can't do it. You must think I have a
7 devil of a memory on it.

8 Q. On the contrary, I think you do not. Do you remember
9 when the three years begun?

10 A. No, sir.

11 Q. Do you remember when the two years begun?

12 A. No, sir.

13 Q. Do you remember what was to be paid for the extension?

14 A. No, sir.

15 Q. Do you recall how the deed looked?

16 A. I can tell you whether Mr. Joyner wrote it, if I see it.

17 Q. Can you recall how the deed looked at this point?

18 A. A piece of paper written on it.

19 Q. Was it printed or written? A. Partly printed and
20 partly written.

21 Q. How much printed? A. Up to the time that was
22 to be filled in was printed.

23 Q. How much of this deed at the point which refers to the
24 time within which the timber may be cut, how much is in print-
25 ing, and how much in writing?

26 A. I guess all is in writing. How does a man know, when he

1 draws up a blank form, and he knows --

2 Q. You guess all is in writing?

3 A. The terms I guess are all in writing.

4 Q. You guess the terms as to which he shall have three
5 years to cut and two years more are in writing?

6 A. If that is the part which specifies these terms, it
7 would be in writing, I would think.

8 Q. And you are as certain of that as any other part of
9 your testimony?

10 A. What?

11 Q. Your last answer? A. What do you mean?

12 Q. I ask you if your memory serves you just as well in
13 that particular?

14 A. No, sir.

15 Q. Then you don't know what part was in printing and what
16 in writing?

A. No, sir.

17 Q. You can't recall any of the physical features of this
18 deed at this time with reference to this clause?

19 A. No, sir, I cannot.

20 Q. Is not it true that a part of this deed, at this
21 point, when it is talking about the time in which to cut,
22 that a part of it is in printing, and is scratched out with
23 a pen?

A. I don't remember anything
24 about that. It has been too long.

25 Q. What was said in the deed about the extension of time,
26 if it was needed?

A. I don't know.

Sam Hardy

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- 1 Q. You don't remember anything said in the deed except
2 that it had three years and two years extension?
3 A. Yes, sir.
4 Q. And you don't remember how it looked in the deed,
5 whether printed or written?
6 A. Part of it was written.
7 Q. How much is printed and how much written, you don't
8 know? A. No.
9 Q. You don't know whether the deed is interlined - that
10 is a part of it stricken out?
11 A. No, I don't know.
12 Q. Do I understand you that the money was paid Frank
13 Gordon for this deed in your store?
14 A. No, sir.
15 Q. How came the deed to be in your store?
16 A. I don't know.
17 Q. Who brought it there? A. I don't know.
18 Q. Who took it away? A. I don't know. I simply
19 saw it there, and wanted some money out of it.
20 Q. Where did you see it? A. On the desk in the
21 store.
22 Q. Your private desk? A. Mine and Mr. Holland's.
23 Q. Do you and Mr. Holland do business there?
24 A. Yes, sir.
25 Q. Are you partners? A. Yes, sir.
26 Q. The deed was on Mr. Holland's desk?
A. Yes, sir, right there in the store.

1 Q. Had the deed been delivered to Frank Gordon at the time?
2 A. What was it doing there? I told you I found it on the
3 desk.
4 Q. Then you don't know whether it had been delivered, or not?
5 A. No, sir.
6 Q. And you don't know whether he had been paid, or not?
7 A. No, sir, only he remarked that the money was going to the
8 man who held the deed of trust.
9 Q. And if paid, you don't know how it was paid?
10 A. No, sir; he acknowledged the man the money was going
11 through. Mr. Britton Edwards' name was there.
12 Q. Was it signed there? A. I don't remember
13 about that, but he acknowledged selling the timber, and
14 he would pay me some money, but it was going to the man
15 who held the deed of trust, and Jim Everett done the same thing.
16 They are sore, and they can't help it.
17
18 RE DIRECT EXAMINATION
19 By Mr. Holland:
20 Q. Mr. Withers showed you just now a paper signed by
21 E.T.Hare, as exhibit H; your reply was that you did not
22 recognize that as his signature.
23 A. That is right.
24 Q. Am I to understand from your answer to that question
25 that Hare undertook to disguise his signature in any way?
26 A. I don't know who done that, but whoever made that dis-
guised Hare's signature.

1 Q. I now show you exhibit E, signed James O. Everett;
2 do you recognize that signature?
3 A. That is very much like his.
4 Q. Now, in reference to the signature of Emma Hare, on
5 exhibit H, I understood you to say to Mr. Withers that you
6 did not recognize that as her signature?
7 A. No, sir.
8 Q. Do I understand you to say that she must have disguised
9 it at the time she wrote it? A. Yes, sir. It is
10 not like the orders she sent to the store for her husband.
11 I have been doing business with them seventeen years, and
12 they owe me more than they will ever pay me.

-----oOo-----

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15 The further taking of depositions in this case adjourn-
16 ed until April 23, 1907.
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Office of E. E. Holland, Esq.,
Suffolk, Virginia, April 23, 1907.

Met pursuant to adjournment.

PRESENT: Same parties as heretofore.

-----oOo-----

A.B. CRAMER, being duly sworn, on behalf of the
defendant, testified as follows:

Examined by Mr. Holland:

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

A. My name is Alfred B. Cramer; age thirty-eight; residence
Suffolk; lumber dealer. I was president of the defendant
company.

Q. Who was president of the defendant company at the time
the Alfred B. Cramer Company, Incorporated, purchased the
timber of A.A. Holland, David Milteer and A.J. Howell, and
Anthony C. Holland, and others?

A. I was.

Q. Who negotiated for the purchase of that timber?

A. I did.

Q. Has the purchase price been paid?

A. It has.

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A.B.Cramer

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Q. At the time the timber was purchased, and the purchase price paid, what knowledge, if any, did you have about any misunderstanding as to the time within which this lumber was to be cut?

A. None whatever.

Q. When did you first hear about the dispute?

A. When I asked for an extension, and tendered the interest.

Q. Has the interest been tendered to these parties, the six per cent interest, for the additional time within which to cut it?

A. It has.

Q. When was it tendered, Mr. Cramer?

A. It was tendered in March of last year.

Q. If it was not tendered before the expiration of the original term of three years, please give your reason for not doing so?

A. It is customary to make that payment at any time during the year.

Q. What is the usual compensation allowed by lumber men for the extension of time?

A. Six per cent on the original purchase.

Q. In making the purchase of this property, did you see the contracts?

A. I did not until after the purchase was made.

Q. Where did you get your idea as to the time within which you were to cut the timber?

A. From Mr. Crocker.

Q. And also from the contracts?

A. From the contracts

1 Q. At the time the timber was purchased, and the purchase price paid, what knowledge, if any, did you have about any misunderstanding as to the time within which this lumber was to be cut?

2

3

4

5 A. None whatever.

6

7 Q. When did you first hear about the dispute?

8

9 A. When I asked for an extension, and tendered the interest.

10

11 Q. Has the interest been tendered to these parties, the six per cent interest, for the additional time within which to cut it?

12

13 A. It has.

14

15 Q. When was it tendered, Mr. Cramer?

16

17 A. It was tendered in March of last year.

18

19 Q. If it was not tendered before the expiration of the original term of three years, please give your reason for not doing so?

20

21 A. It is customary to make that payment at any time during the year.

22

23 Q. What is the usual compensation allowed by lumber men for the extension of time?

24

25 A. Six per cent on the original purchase.

26

Q. In making the purchase of this property, did you see the contracts?

A. I did not until after the purchase was made.

Q. Where did you get your idea as to the time within which you were to cut the timber?

A. From Mr. Crocker.

Q. And also from the contracts?

A. From the contracts

1 after I had received my deed from Crocker Bros; then the
2 contracts came with that contract.
3 Q. What was the time you understood you had to cut it in?
4 A. Three years.
5 Q. What extension? A. With an extension of two by
6 paying interest.
7 Q. And at this time you knew absolutely nothing, as I
8 understand you, of any misunderstanding as to time, or
9 of any alleged fraud in the execution or procurement of the
10 contracts?
11 A. None whatever.
12
13 CROSS EXAMINATION
14 By Mr. Withers:
15 Q. Mr. Cramer, are you familiar with the body of timber
16 here under discussion known as the Crocker purchase?
17 A. How do you mean familiar?
18 Q. Familiar with the physical conditions?
19 A. Do you mean have I gone over it?
20 Q. Yes? A. No.
21 Q. Have your employees gone over it?
22 A. Yes.
23 Q. Have they submitted estimates of the quantity to you?
24 A. They have.
25 Q. From your knowledge thus obtained as to the quantity
26 of timber, and the area of land, how long should it take to

1 log the timber, if it were logged continuously?
2 A. I should say eight months to a year. It depends en-
3 tirely on the weather conditions.
4 Q. Was any attempt made to log this lumber during the
5 first three years after the signing of the original con-
6 tracts by the land owners?
7 A. Nothing I know of.
8 Q. You say you never saw the original deeds until after
9 you had purchased from Crocker Bros?
10 A. Yes.
11 Q. You say the money was tendered to pay interest on this
12 purchase in March, 1906; please tell me if, at that time,
13 an actual tender was made by offering actual money to the
14 parties? A. No; actual money was not
15 offered in March.
16 Q. Is it not true that in March what you mean by a tender
17 was the letter written by Col. Holland to these parties offer-
18 ing to pay them a sum of money equal to six per cent, and some
19 additional money if an additional term, making five years
20 of extension, was granted?
21 A. Well, that is true in a sense. The six per cent was
22 expected to be paid. Col. Holland wrote the letter asking
23 them to come to him to see if they would extend an additional
24 two years, at an extension of six per cent, making twelve
25 per cent on the original purchase.
26 Q. For five years? A. For two years additional
time.

1 Q. I here hand you exhibit B, and ask if that is what
2 you meant by a tender being made in March?

3 A. I should say that that was the tender that was asked
4 for the two additional years by the payment of six per cent
5 interest. The six per cent interest due on the contract
6 at the expiration of two years had in some cases - in that
7 case I do not think it had expired; that six per cent for
8 the two years was expected to be paid, and this was for an
9 additional two years.

10 Q. Let us have an understanding. You say a tender of
11 six per cent interest to cover the amount due on the two
12 years extension claimed was made in March. My question is,
13 are you talking about the letter written by Col. Holland on
14 March 13th to these parties as constituting the tender of
15 which you spoke?

16 A. No, I would not say that.
17 I should say that letter there was to see these parties,
18 and see if they could get an extension of the extra two
19 years. The original two years would have been paid, and
20 we did tender that.

21 Q. How was this tender made in March, and by whom?

22 A. That letter was the only thing written in March. In
23 April the money was tendered by check.

24 Q. Are you not mistaken as to the time? Is it not true
25 that no tender was made even by check until June?

26 A. If it was, it was the delay of the people with whom
I tried to settle.

1 Q. By whom was this tender of which you spoke made?

2 A. It was made by Mr. Gay.

3 Q. To these parties at what place?

4 A. At their homes.

5 Q. And he offered your checks?

6 A. No, he offered his own checks.

7 Q. And you think this was in April or June?

8 A. I think Mr. Holland and Mr. Gay went there in April.

9 Q. I think they did go there in April, but the tender
10 was probably made in June. I ask what is your recollection
11 about it?

12 A. I would say that my recollection is that Mills was
13 ready to tender it at this time.

14 Q. That he was ready?

15 A. That he did tender it.

16 Q. You were not present at this tender?

17 A. No.

18 Q. And only know what was told you?

19 A. Yes, sir.

20 Q. At this time what was offered - how much money?

21 A. For illustration, say the contract was for \$600. For
22 the extension of the extra two years, it was made \$1200,
23 and six per cent offered on the \$1200, if they would allow
24 an extension of two years, and, if not, six per cent on
25 the original contract. The amount was figured up, and pinned
26 to it for the two years and for the two years extension.

Q. For the two years contemplated in the contract, and two additional years of extension?

A. Yes, sir, which would be paying the whole thing in advance.

Q. And the tender was six per cent on double the amount of the purchase price?

A. Yes, sir.

Q. Have you had your deed from Crocker Bros. admitted to record?

A. I think it is. I will not be positive. The Crocker Bros. deeds were admitted to record, but whether the Crocker Bros.' deed to the company was, I will not say.

Q. Will you please file a copy of the deed from Crocker to the A.B.Cramer Company?

A. I suppose the company will. I have not access to the deeds now.

RE DIRECT EXAMINATION

By Mr. Holland:

Q. State, Mr. Cramer, if your company had other timber holdings, and why they did not commence to cut this particular timber in controversy any earlier?

A. They had other holdings there, and there was five years on that tract of timber, and it was the idea to cut it all at the same time. We were working on a tract of timber down in North Carolina that it was our desire to move our equipment from one to the other, and by the extension of this time on this particular tract up here, we thought we

1 could get through down there and move the equipment all here.

2 Q. About what was the extent of the timber holdings of
3 your company at that time, if you know?

4 A. At what point?

5 Q. Everywhere?

6 A. Something like twenty-seven
7 million.

8 Q. Was there any objection made by any of the parties
9 to your failure to actually tender them the money?

10 A. None whatever.

11 Q. When you estimated just now that the timber could
12 probably be cut in eight or ten months, did you base that
13 estimate upon your equipment, or upon equipment of a small
14 mill?

15 A. By working it myself with my
16 own equipment.

-----oOo-----

17
18 ELIHU JOYNER, being duly sworn, on behalf of the
19 defendant, testified as follows:

20 Examined by Mr. Holland:

21 Q. State your name, age, residence and occupation, and
22 if you know the parties to this suit?

23 A. Elihu Joyner; age thirty-eight; residence Holland,
24 Virginia; occupation merchant; I know the parties to this
25 suit.

26 Q. What pecuniary interest, if any, Mr. Joyner, did you

1 have in the purchase of the standing timber from A.J.Howell,
2 J.K.Holland, D.H.Milteer by A.A.Holland and others?
3 A. None whatever.
4 Q. What pecuniary interest, if any, have you in the
5 result of this suit? A. None.
6 Q. Mr. Joyner, I now hand you the original deed from
7 A.J.Howell to A.A.Holland; please examine it, and state
8 by whom it was prepared?
9 A. The deed was prepared by myself.
10 Q. Will you tell where it was prepared?
11 A. In A.J.Howell's house.
12 Q. Who was present at the time it was being prepared?
13 A. A.J.Howell, A.A.Holland, and, I think, A.J.Howell's
14 wife was in the room.
15 Q. Who gave you, Mr. Joyner, the information necessary
16 to enable you to fill in the blanks in that deed?
17 A. Both parties to this deed.
18 Q. Are the blanks filled in in your handwriting?
19 A. Yes, sir.
20 Q. Now, who was present at the time the information was
21 given you, Mr. Joyner, that enabled you to fill in these
22 blanks? A. Both parties.
23 Q. After the deed was prepared, what opportunity, if any,
24 did Howell have to read it?
25 A. I think that I read the deed in his presence.
26 Q. Howell testifies on page five that you handed him the con-

1 tract to read, and that he attempted to read it in a slow
2 way; that you then said to him "Let me assist you in reading
3 it," and you read the stumpage, and the railway, and the
4 time, and he said "The remainder is nothing but form; he
5 said the railway was mere form, and the ten inches was stated,
6 and explained, and he stated the remainder was nothing but
7 form, as all contracts are formed so, and then I signed the
8 contract." State whether or not you read this contract
9 to him, and if you did, state whether or not you misread
10 it to him?
11 A. I know I did not misread it. I think I read it, as
12 I did most of them. Jackson being able to read himself,
13 I am not sure, it has been a long time.
14 Q. If you did read it to him, did you read the whole of it,
15 just as you had written it?
16 A. Yes, sir, just as I wrote it I read it, if I read it,
17 and I think I read it.
18 Q. Now, Mr. Joyner, I call your special attention to this
19 clause in the contract: "The full term of three years
20 within which to cut and remove the timber hereby conveyed,
21 the said term to commence from date of contract, and two
22 years more by paying lawful interest." In whose handwriting
23 are those blanks? A. Mine.
24 Q. Who gave you that information as to the time within
25 which that timber was to be cut?
26 A. Both parties.
Q. Were they both present there together?

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1 A. Both present.

2 Q. Could Howell have heard any statement that A.A.Holland

3 made in reference to the time in which he was to cut it?

4 A. Yes, sir, either could have heard the other.

5 Q. Howell intimates in his testimony, Mr. Joyner, that the

6 words "and two years more by paying lawful interest," were

7 not in the contract at the time you read it to him, or

8 at the time he executed it; please state what you know

9 about that?

10 A. I know whatever is written in every contract I wrote for

11 A.A.Holland, every written part, was there when I took their

12 acknowledgements.

13 Q. Now, take that deed, and examine it, and see whether

14 there has been any alterations or additions in it since it

15 was executed and acknowledged by these parties before you?

16 A. I see nobody's handwriting but my own.

17 Q. There has been said something about the preparation

18 of some other deeds that passed between A.J.Howell and Mr.

19 Holland at that time. Do you recall anything about them?

20 A. Yes, we prepared some other deeds at the same time -

21 some land deeds.

22 Q. State, if you know, what the deeds were?

23 A. It seems to me a deed and a deed of trust. I think

24 Howell made Holland a deed - no, I don't know how it was;

25 I don't remember, but I know there were some other deeds

26 prepared.

Q. You remember that there was some other deeds prepared?

1 A. Yes, sir.

2 Q. Do you know who owned a part of the land on which Howell
3 sold Holland the timber just prior to that date?

4 A. It seems to me it was owned by I.A.Luke.

5 Q. By I.A.Luke or A.A.Holland?

6 A. No, by I.A.Luke, I think, and then may be A.A.Holland
7 bought it from I.A.Luke.

8 Q. Now, Mr. Joyner, I hand you the deed from J.K.Holland
9 to A.A.Holland. Please examine that deed, and tell who
10 prepared it? A. I did it.

11 Q. Who was present at the time the deed was prepared?

12 A. Mr. A. A. Holland and J.K.Holland.

13 Q. Who gave you the information necessary to enable you
14 to prepare that deed? A. Both parties to the deed.

15 Q. Do I understand, then, it was prepared at a time when
16 both were present, and when each could hear the information
17 given you by which you were enabled to prepare it?

18 A. Yes, sir.

19 Q. After the deed was prepared, was Mr. Holland given an
20 opportunity to read it? A. I think I read the deed
21 for Mr. Holland.

22 Q. Now, if you read the deed, state whether or not you
23 read it in full?

24 A. I read it as the deed is.

25 Q. I call your special attention to the following clause:

26 "The full term of three years within which to cut and remove
the timber hereby conveyed, said term to commence from the

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1 date of this contract, and two more years, if needed, by
2 paying six per cent interest on purchase price." State
3 in whose handwriting those blanks are?
4 A. Mine.
5 Q. When was that put there?
6 A. It was put there in Mr. J.K.Holland's house, at the
7 same time the deed was written.
8 Q. Prior to its execution and acknowledgement?
9 A. Yes, sir.
10 Q. Mr. J.K.Holland, in his testimony, intimates there was
11 nothing in the contract with reference to the two years,
12 if needed, by paying six per cent interest on the purchase
13 price. If I understand your testimony, it is that that
14 was in the deed before its execution by Mr. Holland, and if
15 you read it to him you read it with that clause, and read
16 that clause? A. Yes, sir.
17 Q. Now, Mr. Joyner, examine this deed, and say if there
18 have been any alterations or additions in it, or to it since
19 its execution and acknowledgement before you?
20 A. I do not see any changes.
21 Q. After its execution and acknowledgement, was it delivered
22 to Mr. A. A. Holland? A. Yes, sir.
23 Q. Mr. J. K. Holland, in his testimony, states that Mr.
24 A.A.Holland told you to write down two years from date, and
25 if not cut and removed in two years, the lumber would revert
26 to J.K.Holland? "This is all he told him about the time."

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1 If Mr. A. A. Holland had told you to write that two years,
2 in the presence of Mr. Holland, state what you would have
3 done? A. I would have written it
4 as he told me to write it.
5 Q. Then, as I understand you, the three years within which
6 to cut and the two years additional time, was written
7 by you upon information furnished by either Mr. J.K.
8 Holland, or Mr. A.A.Holland, when they were both present,
9 and before the deed was executed and acknowledged?
10 A. Yes, sir, in Mr. J.K.Holland's house.
11 Q. Now, Mr. Joyner, I hand you the deed from D.H.Milteer
12 to A.A.Holland. Please examine it, and state by whom
13 that deed was prepared.
14 Q. It was prepared by me.
15 Q. Where was it prepared, and who was present at the time?
16 A. In Mr. D. H. Milteer's house, and Mr. A.A.Holland,
17 and Mr. Milteer and Mr. Milteer's wife were present.
18 Q. Who furnished you the necessary information to fill
19 in the blanks to that deed?
20 A. Both parties to the deed.
21 Q. You have stated that both were present?
22 A. Yes, sir.
23 Q. Both heard the information that was given you, didn't
24 they? A. Yes, sir.
25 Q. After the deed was prepared, do you recall whether or
26 not you read it to Mr. Milteer?
A. I don't remember, but I think I read the deed. If not

1 it was read by somebody.

2 Q. If the deed was read by you at all, state whether or not

3 it was read in full?

4 A. It was read in full, if it was read by me.

5 Q. Mr. Joyner, I call your special attention to the

6 clause in the deed as follows: "The full term of three

7 years within which to cut and remove the timber hereby

8 conveyed, said term to commence from the date of this

9 contract, and two years more, if needed, by paying six

10 per cent interest on purchase price." In whose hand-

11 writing are those blanks? A. Mine.

12 Q. Who gave you the information that enabled you to fill

13 in these blanks as to the time?

14 A. Both parties.

15 Q. Both were present, and both heard the information

16 given? A. If both parties did not give the

17 information, one gave it, and the other consented. I

18 don't remember every word that was spoken.

19 Q. Examine the deed, and see if there are any additions

20 or alterations in that deed since it was executed and

21 acknowledged? A. There has been something

22 put on the margin since it was written, but that is struck

23 out, and it does not affect the deed at all.

24 Q. Write what additions have been made, even up on the

25 margin? A. There is no addition now, because

26 it has been struck out.

Q. No additions have been made?

A. No, sir, no additions have been made.

Q. Mr. Milteer, in his testimony, states that when you were coming out of the house, Mr. Holland said "There is a Presidential election coming on, and there may be a money panic, which you know sometimes is; if there should come a Presidential election, and the lumber market should drop so low it would not do to cut it and sell it, will not you give me more time", and he said "I will consider it." What do you remember about such conversation?

A. I don't remember having any such conversation of that kind.

Q. Then, if I understand your statement, it is that at the time this contract was executed and acknowledged by these parties, the time within which the timber was to be cut was stated in the contract as three years, with two years additional, if needed, by paying six per cent interest on the purchase price?

A. Yes, sir.

Q. And that was known to both Mr. A.A.Holland and Mr. Milteer?

A. Yes, sir.

Q. Now, Mr. Joyner, I hand you the deed from Anthony T. Holland and Lucy C. Holland to A.A.Holland. Please tell me who prepared that deed?

A. I did.

Q. Where was it prepared, and who was present at the time?

A. I don't remember.

Q. Do you mean by that answer you don't remember where it was prepared, or who was present?

1 A. I don't remember where it was prepared, whether in my
2 office or at his house.
3 Q. At the time of its preparation, who was present, do
4 you know? A. I do not.
5 Q. Mr. Joyner, I call your special attention to the clause
6 in the contract which refers to the time within which the
7 timber was to cut, and especially to the three years and
8 two years additional, if needed, by paying six per cent
9 interest on the purchase price; is that in your handwrit-
10 ing? A. I can answer the question, since
11 thinking as to where we were.
12 Q. Go ahead?
13 A. I think we met Holland and his wife as they were just
14 starting to church. I don't remember whether they signed
15 that day, or not, but we told them just how all the deeds
16 were being prepared, and they assented.
17 Q. Before it was signed and executed by the parties, was
18 it read to them? A. I don't remember.
19 Q. But you are prepared to say, as I understand you,
20 that at the time it was executed and acknowledged, the
21 time, as stated in the contract, was there?
22 A. Yes, sir, it was there.
23 Q. I now hand you the deed from Thos.F.Gordon to A.A.
24 Holland. Please examine it, and state who prepared it?
25 A. I prepared it.
26 Q. Who was present at the time it was prepared?

1 A. I think Mr. Holland and Gordon both were present?
2 Q. Gordon states that on the morning the deed was prepared,
3 he lost his child, and that you and Mr. Holland came to his
4 house when he was getting ready to go away, and that you had
5 the contract, and said you were there to get it signed, if
6 possible; that you handed him the contract, that he
7 attempted to open it and look at it, and you said it is
8 nothing more than our agreement, three years in which to
9 cut and remove the timber. What is your recollection of
10 that conversation?
11 A. I do not recollect. I know some of his people were
12 sick.
13 Q. State whether or not you know the contract was read
14 to him? A. I don't know.
15 Q. State whether or not the words "Three years within which
16 to cut the timber, and two more years, if needed, by paying
17 six per cent interest on the purchase price," was in the con-
18 tract at the time of its execution?
19 A. I don't remember about this now. He may have signed
20 it, and allowed me to fill it in. I don't remember. If
21 it was done, it was done by permission of Holland and Gordon
22 both.
23 Q. If that was done, was the information necessary for
24 you to prepare it given you at the time, in the presence
25 of both parties?
26 A. If it was, the information was given me, but I think
it was all prepared when they signed it.

1 Q. You think it was all prepared when they signed it?
2 A. Yes, sir.
3 Q. Gordon says, in his testimony, that after having the
4 conversation with reference to the deed, he said "If that
5 is all, and you are in a big hurry, and I am in a big hurry,
6 I will sign it." You then said to me "Your wife will have
7 to sign right down here;" that you took it and handed it
8 to her, and that they both signed it there and then. Hav-
9 ing refreshed your memory by reading his statement, what
10 do you remember about it? A. I don't remember all
11 that happened, but his statement may be true, after having
12 had all the information given me.
13 Q. State whether or not you would have put in this contract
14 three years within which to cut, two years additional, if
15 needed, unless it had been agreed upon by the parties?
16 A. No, sir, not for a million dollars.
17 Q. Then you are prepared to state positively that those
18 words were put there with the knowledge and consent of both
19 of those parties? A. I am prepared to say they were.
20 Q. I now hand you contract from James O. Everett to J.D.
21 Crocker & Bro. Examine it, and tell me who prepared it?
22 A. I prepared it.
23 Q. Who gave you the information necessary to fill in the
24 blanks in that contract? A. Mr. Holland.
25 Q. Mr. A.A.Holland? A. Yes, sir.
26 Q. Was Everett present at the time?
A. I do not think Everett was present when I prepared that.

1 I think I prepared that at the office.

2 Q. How long after its preparation before Everett signed it

3 and acknowledged it? A. It must have been at the

4 same time. I might have left the date blank. It seems

5 to me Everett was working on the railroad, at the time, and

6 I prepared it, and had him come in and sign it.

7 Q. When he came in to sign it, was it read to him?

8 A. I think so.

9 Q. If it was read by you at all, it was read in full,

10 was it not? A. Yes, sir, if read at all.

11 Q. Are you familiar with Everett's handwriting?

12 A. Yes, sir.

13 Q. State whether or not that is his handwriting, and whether

14 or not it was actually signed by him before you?

15 A. That is his handwriting, and it was signed before me. I

16 remember it very well.

17 Q. James O. Everett testified that he made a bargain to

18 sell his timber for \$85; that a deed of trust for \$78 was

19 paid off, and he was given an order for \$7; that no deed

20 was ever presented to him, or signed by him. What do you

21 say about that? A. I say that he signed this deed

22 before me, and I acknowledged it.

23 Q. Did his wife sign it? A. He has not any wife

24 - he did not at that time.

25 Q. Now, Mr. Joyner, I hand you the deed from E.T.Hare and

26 wife to J.D.Crocker & Bro. State who prepared that deed?

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Q. Now long after the preparation before Hare signed it and acknowledged it? A. I must have been at the same time. I might have left the date blank. It seems to me Hare was working on the railroad at the time, and I prepared it, and then he came in and signed it. Q. When he came in to sign it, was it ready to sign? A. I think so. Q. Is it possible for you to tell it was ready to sign, was it not? A. Yes, sir, it was at all. Q. Are you familiar with Hare's handwriting? A. Yes, sir. Q. State whether or not he signed at his handwriting, and whether or not it was actually signed by him before you? A. That is his handwriting, and it was signed before me. I remember it very well. Q. James G. Hare testified that he made a party in to sell his timber for \$500; that a deed of trust for \$500 was paid out, and he was given an order for \$500; that he gave the order to the bank, or signed by him, that he gave the order to the bank. A. I say that he signed that deed before me, and I acknowledged it. Q. Did he sign it with you? A. He has not yet with me. He did not at that time. Q. Now, Mr. Joyner, I hand you the deed from E.T. Hare and state who prepared that deed.

1 A. I did.
2 Q. State, if you know, where it was prepared, and who was
3 present? A. I think it was prepared at my
4 office.
5 Q. Who was present, if you know?
6 A. I don't know that any one was present except Mr. Holland
7 had given me the information when it was prepared.
8 Q. After it was prepared, did Hare read it?
9 A. I don't remember.
10 Q. Are you familiar with Hare's handwriting?
11 A. Yes, sir.
12 Q. State whether or not he signed, both he and his wife,
13 that deed before you acknowledged it?
14 A. They signed it both before me, and acknowledged it.
15 Q. State whether or not the clause three years within which
16 to cut and two years additional time by paying six per cent
17 interest was in the deed at the time of its execution?
18 A. It was there at the time of its execution.
19 Q. Do you remember whether they came in at the same time,
20 or not? A. I do not.
21 Q. Hare, in answer to this question: "Are you prepared
22 to state that you did not appear before Mr. Elihu Joyner,
23 some where on the 21st of March, and sign the paper," replied
24 "I just told you I do not think I was at home. I have no
25 knowledge of appearing before Mr. Joyner concerning these
26 papers; if I did, I have forgotten it". If I understand you,

1 you are positive in your statement that he did appear before
2 you, and did sign it, and did acknowledge it?

3 A. I am positive.

4 Q. I now hand you the deed from J.A.Rawles and wife to
5 A.A.Holland. Please tell me who prepared that deed?

6 A. I did.

7 Q. Who was present at the time it was prepared?

8 A. Mr. A.A.Holland and Mr. John A. Rawles.

9 Q. Who gave you the information necessary to enable you
10 to fill in the blanks? A. Both parties to the deed.

11 Q. They were both present, as I understood you, at the
12 time it was prepared? A. Yes, sir.

13 Q. Now, Mr. Joyner, I call your special attention there
14 to the clause with reference to time - three years within
15 which to cut it and two years additional, if needed, by
16 paying six per cent interest on the purchase price. State
17 whether or not that clause was in the deed at the time of
18 execution and acknowledgement?

19 A. It was when executed and acknowledged before me.

20 Q. And it was put there upon information furnished you
21 by either Mr. Rawles or Mr. Holland, and when both parties
22 were present? A. It was.

23 Q. Mr. Rawles stated that with reference to the extension
24 the contract should have read as follows: Three years with-
25 in which to cut and remove the timber, and in case of a money
26 panic during the Presidential campaign, or a depression in the
lumber market, Holland should have an additional two years by

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1 and state whether or not the words "three and two years
2 additional, if needed, by paying six per cent interest on the
3 purchase" are in your handwriting?
4 A. Yes, sir.
5 Q. When were those words inserted by you?
6 A. While filling out the deed before its execution.
7 Q. When both were present? A. Yes, sir.
8 Q. And upon information furnished you in the presence
9 of both parties? A. Yes, sir.
10 Q. Harris says, in answer to a question on his examination,
11 that he said with reference to the extension that in case of
12 a money panic or lumber depression, or anything of that kind,
13 he would allow the addition of two years. Do you remember
14 about such statement as that?
15 A. I don't remember anything about it.
16 Q. Harris also states that at the time he signed the deed,
17 there was not in the contract he signed the provision giving
18 the additional time within which to cut it. What do you
19 say about that? A. I say the time was in here
20 - the additional time of two years was put in the deed when
21 it was executed.
22 Q. Were those words written in the deed at the time you
23 were preparing it? A. Yes, sir.
24 Q. And in his presence? A. Yes, sir.
25 Q. And in the presence of both parties?
26 A. Yes, sir.

Q. Did Harris read the deed? A. Yes, sir, he read every word of it.

Q. Have there been any additions or alterations made in the deed since he read it?

A. Not that I see.

Q. And the deed, as now presented to you, according to your best recollection, is the deed prepared at that time, and the deed Harris read at that time?

A. Yes, sir.

CROSS EXAMINATION

By Mr. Withers:

Q. Mr. Joyner, you are a notary public?

A. Yes, sir.

Q. And were holding that office in 1903?

A. Yes, sir.

Q. You are accustomed to writing a great many deeds, are you not?

A. Not many, but a few.

Q. You take a great many acknowledgements, do you?

A. A good many acknowledgements, yes, sir.

Q. About this time, three or four years ago, do you know whether you were writing many deeds at that time?

A. I wrote a good many lumber contracts, and some deeds of bargain and sale for land.

Q. You do not burden your memory, Mr. Joyner, with the details

Q. Did Harris read the deed? A. Yes, sir, he read every word of it.

Q. Have there been any additions or alterations made in the deed since he read it?

A. Not that I see.

Q. And the deed, as now presented to you, according to your best recollection, is the deed prepared at that time, and the deed Harris read at that time?

A. Yes, sir.

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Q. Mr. Joyner, you are a notary public?

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Q. You are accustomed to writing a great many deeds, are you not?

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A. A good many acknowledgements, yes, sir.

Q. About this time, three or four years ago, do you know whether you were writing many deeds at that time?

A. I wrote a good many lumber contracts, and some deeds of bargain and sale for land.

Q. You do not burden your memory, Mr. Joyner, with the details

1 of all the deeds you prepare, do you?
2 A. I do not.
3 Q. It would be mentally impossible to do it?
4 A. I could not do it. There are some things happen
5 that I remember, some incidents.
6 Q. But, in the ordinary course of your business, you do
7 not undertake to impress these details on your mind?
8 A. No, sir.
9 Q. At the time you were preparing these deeds, I do not
10 suppose it occurred to you for a moment that they would
11 ever be brought into question again, did it?
12 A. No.
13 Q. You made no particular efforts to remember the details
14 of these deeds? A. No particular effort.
15 Q. Now, Mr. Joyner, we know that everybody, notaries
16 public, lawyers and business men generally, very often
17 take things for granted, and write out deeds and fill out
18 deeds in a more or less careless sort of way. Now, is
19 not it true that in the preparation of these deeds you
20 paid no particular attention to the deeds, and could not
21 undertake to remember the exact incidents and surrounding
22 circumstances under which these several deeds were executed?
23 A. Yes, I have already stated that this morning.
24 Q. Is not it customary, among friends and people who are
25 well acquainted, like in a neighborhood in which you live,
26 to have a man execute a deed on one day, and acknowledge it

1 the next, and put the date in as of the date he signed it,
2 and also to sign a deed in blank, and have it filled in
3 afterwards, and all such things as that?

4 A. It is customary to leave the date of the deed open
5 until the parties sign, and let the date of acknowledgement
6 compare with the date of the deed, but it is not customary
7 to sign deeds before they are made.

8 Q. It is often true, though, in lumber contracts, that a
9 man signs it and acknowledges it, and lets the form, which
10 is a printed form, be filled in afterwards?

11 A. As I stated this morning, there might be one in this
12 whole lot, and that was Anthony Holland and his wife. We
13 met them in their field going away, and it may be that was
14 the way that was done, but I remember where we were when
15 the others were executed.

16 Q. Now, as to the Anthony Holland deed, I think it is
17 in testimony that at the time you and Mr. Holland came up
18 to their house, that they were in their cart or buggy, about
19 to go to church, and either you or Mr. Holland had a ham
20 in his hand, and both parties were in a hurry, you and Mr.
21 Holland to go to other parties, and have the deed signed,
22 and Anthony Holland to go to church. Is not it true
23 that that deed, that the blank was signed by Anthony
24 Holland and his wife, after the terms of the deed had been
25 stated to him by you and Mr. Holland, and afterwards was
26 filled in? A. The terms were all stated by Mr.

Holland. I had nothing to do with stating the terms in any of the deeds. I don't remember where they signed that deed, nor where I was when I acknowledged it, but I know that we did not write that deed in their house like we did the others.

Q. They signed it while they were there in the cart, didn't they?
A. I don't know.

Q. Then you don't remember whether the deed was signed by them that day, and afterwards filled in by you, or whether it was written at that time and signed by them then or afterwards?
A. I don't remember whether the

deed was written before or after we met them.

Q. Nor before or after they signed it?

A. No.

Q. What kin are you to A.A.Holland?

A. Not a bit.

Q. What connection?
A. I married his sister.

Q. You are his brother-in-law?
A. Yes, sir.

Q. Throughout your testimony you have said that the terms of these deeds were dictated by both parties, the grantor and the grantee. What do you mean by that?

A. I mean one party dictated the terms, and the other consented.

Q. Which party dictated?
A. I don't remember.

Q. Was it not usual for Mr. Gus Holland, who was buying the timber, to state the terms on which he was buying?

1 A. I think he stated the terms most of the time.
2 Q. There did not seem to be any dispute between the parties
3 as to any of the terms?
4 A. None at all.
5 Q. How about the clause as to a permanent railway? Was
6 that clause read to the parties, or did they readily assent
7 to it?
8 A. Every deed that was read - they were all read, but
9 I don't remember whether all the deeds were read by me.
10 Some of the parties read the deeds themselves, and some
11 were read by me. It might be that some were not read at
12 all.
13 Q. I mean those deeds which were read to the parties,
14 when the clause referring to the permanent railroad was
15 reached, was it readily assented to by these parties, or
16 was it explained by Mr. Holland what was meant?
17 A. I don't remember about that.
18 Q. Now, fixing your mind on the A.J.Howell deed, will you
19 please tell in detail, if you can, the surrounding facts
20 and circumstances under which he signed this deed, and the
21 conversations at the time between the parties?
22 A. Now, I have already said that I did not remember every-
23 thing that happened. I don't remember the conversations
24 that took place between Mr. Holland and the people. I do
25 remember that there were some more deeds prepared that day
26 for some land - a deed and a deed of trust - between Mr. A.A.

1 Holland and A.J.Howell.

2 Q. Which deeds were prepared first?

3 A. I don't remember.

4 Q. What kind of pen did you use that day?

5 A. I think it was a fountain pen.

6 Q. Did you use the same pen with all these deeds?

7 A. No, sir.

8 Q. Were all the deeds that were prepared by you on the

9 6th of February written with this fountain pen?

10 A. Whatever dates we went out, all the deeds prepared

11 that day were written with the same pen.

12 Q. From whom did you get the blank forms?

13 A. I don't know, but I think from a printer here in

14 Suffolk.

15 Q. Did you write the deed of trust and deed of bargain

16 and sale from A.A.Holland to A.J.Howell?

17 A. I think so.

18 Q. Are you certain of this?

19 A. No.

20 Q. To whom were these deeds delivered?

21 A. A.A.Holland.

22 Q. As also was the timber contract?

23 A. Yes, sir.

24 Q. All of the contracts and deeds were delivered to Holland

25 to be taken to the clerk's office?

26 A. Yes, sir.

1 Q. Do you remember the amount of money the deed of trust
2 was to secure? A. No, sir.

3 Q. Who dictated the terms of these deeds?

4 A. Just as the lumber contracts; one dictated and the
5 other consented.

6 Q. Do you remember whether Holland or Howell told you
7 how to fill in those deeds?

8 A. No, sir, I do not.

9 Q. They were filled in the same day at the same time?

10 A. The same day, at the same time.

11 Q. Was the timber deed read to Howell, and, if so, by
12 whom? A. I think I read the deed to

13 Howell, but I am not sure, Howell is capable of reading,
14 and it may have been that he read it himself.

15 Q. Do you remember any of the circumstances under which
16 you read it? A. I do not. Very often,

17 in going over these deeds, we read every clause from the
18 beginning through, and each party can hear all the clauses.

19 Q. It is also true that in these printed forms, where you
20 fill in only a part, that you sometimes only read what was
21 written in the deed; is not that true?

22 A. I read what is written, and if anything wants to be
23 struck out, I strike out and interline what they want, just
24 as I did in these deeds.

25 Q. You were writing these timber contracts on a printed
26 form? A. Yes, sir.

1 Q. In which the larger part was in printing?
2 A. Yes, sir.
3 Q. And you don't remember what part of the deed was read
4 by you, or if any of it was read by you?
5 A. No, I don't remember about that in this case.
6 Q. Do you remember using such an expression as this to
7 Howell, that a part of this deed is a mere matter of form,
8 or is a form, or something to that effect?
9 A. I don't remember it. I might have said so.
10 Q. Now, about the time in which the timber was to be cut,
11 you say the words that are now in the deed were there at the
12 time of signature. Do you say this, Mr. Joyner, from your
13 memory, or do you testify from what is your usual course
14 of procedure?
15 A. I say it from my memory.
16 Q. How is it, Mr. Joyner, that you can remember the exact
17 words with reference to the time, and can remember none
18 of the other circumstances under which this deed was signed?
19 A. Because I remember it, because it was written, and be-
20 cause the question of time was the main question in these
21 contracts. That is why I remember it.
22 Q. How did the question of time read in Howell's contract?
23 A. It read three years in which to cut the timber, with
24 an extension of two years more, if needed, by paying six
25 per cent interest on the purchase price.
26 Q. What do you mean by "if needed?"

- 1 A. I mean if the party who bought the timber could not
2 cut it in that time.
- 3 Q. If he could not cut it?
- 4 A. If he could not get it away in that time.
- 5 Q. Was not it the understanding of the parties that some
6 effort must be made in the three years to cut the timber,
7 and if he could not get it away in the three years addition-
8 al time could be had.
- 9 BY MR. HOLLAND: Objected to, as the deed speaks
10 for itself.
- 11 A. I don't remember.
- 12 By Mr. Withers:
- 13 Q. What do you mean when you say if he could not cut
14 it in that time?
- 15 A. I mean if he could not cut it.
- 16 Q. How do you know he could cut it if he did not try to
17 cut it? A. I don't know anything about
18 it.
- 19 Q. You say the deed read as to time that Holland was to
20 have three years in which to cut and remove the timber,
21 and two more years, if needed, by paying six per cent
22 interest on the purchase price. That is your recollection?
- 23 A. That is my recollection.
- 24 Q. And you are quite certain that these words, and all
25 of these words, were put in with a pen by you?
- 26 A. Yes, sir.
- Q. I now hand you the Howell contract, and ask you if y

1 are not mistaken with reference to those words?

2 A. Well, verbatim I am, but lawful interest and six

3 per cent interest is the same in our state.

4 Q. Who dictated these terms in the contract to you?

5 A. Mr. A.A.Holland or A.J.Howell. It was dictated by

6 one, and consented to by the other.

7 Q. Do you remember which one dictated it?

8 A. I do not.

9 Q. Whoever dictated it, dictated the words which I repeated

10 in the preceding question, as follows: "The parties of the

11 first part hereby grant, accord and assure unto the party of

12 the second part, and his assigns, the full term of three

13 years within which to cut and remove the timber hereby

14 conveyed, said term to commence from the date of contract,

15 and two more years, if needed, by paying lawful interest on

16 the purchase price."

17 A. Yes, sir, what is in the contract was told me to be

18 put in there.

19 Q. I did not ask you if you were told to put in the contract

20 what is now in the contract. I ask if you were told to

21 put in the contract the words which I have just read to you?

22 A. What were those words?

23 Q. "The said parties of the first part hereby grant, accord

24 and assure unto the party of the second part, and his

25 assigns, the full term of three years within which to cut and

26 remove the timber hereby conveyed, said term to commence from

the date of contract, and two years more, if needed, by pay

1 lawful interest on the purchase price?"

2 A. Just what is in the deed was told me to put in there

3 by one of the parties, and was assented to by the other.

4 Q. Then you don't remember, of your own recollection,

5 what was told you, nor by whom, and rely entirely on what

6 is now in the deed?

7 A. I know that they were telling me the terms as I

8 went over, and I put the terms in there, but I relied

9 for them on what they told me, and what I saw in the contract.

10 Q. Independently of the contract you don't remember?

11 A. I don't remember which told me.

12 Q. Nor what the exact words were?

13 A. Not the exact words, no. I know what the meaning of

14 the words were that they told me.

15 Q. This contract does not have in it the words "if needed."

16 Am I to understand from you that the parties understood

17 at that time that the two additional years were to be had

18 only if needed, and by paying lawful interest, or am I

19 to understand that they agreed that these words should not

20 be in this contract?

21 BY MR. BURGESS: The same objection as hereto-

22 fore stated.

23 A. I think they meant to pay six per cent interest on the

24 purchase price on the original purchase price, for the two

25 years after the first three years had expired.

26 By Mr. Withers:

Q. Whether it was needed or not?

A. If they did not need it, they would not want to pay it, and would not need to pay it. They did not need to pay that unless they had to have it.

Q. Then it was your understanding that they were only to pay it if they needed it?

A. That is my understanding.

Q. Now, as to J.K.Holland's deed, can you recall any of the circumstances under which this deed was signed?

A. I can.

Q. State them?

A. That was signed in Mr. Holland's house, and written in his house, I think on a sewing machine or small table, right close up to a little end window, and my back within two feet of the hearth. The terms were dictated to me by Mr. A.A.Holland, I think, and consented to by Mr. Holland as I went through and filled in the blank form.

Q. Do you remember anything that Mr. J. K.Holland said at that time about the length of time A.A.Holland was to have in which to cut this timber?

A. Yes, I remember that he was to have the time as stated in the contract.

Q. What did Mr. A.A.Holland say about erecting a mill at Frank Gordon's gate at that time?

A. I don't remember.

Q. How long did he say he expected it would take him to cut this timber of J.K.Holland? A. I don't remember that.

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- 1 Q. Do you remember what Mr. J. K. Holland said about the
2 road Mr. A.A.Holland would have to haul his timber to Elwood
3 over? A. No, sir.
4 Q. Did not Mr. A.A.Holland say to Mr.J.K.Holland that he
5 was going to put a mill at Frank Gordon's gate, and expected
6 to cut J.K.Holland's timber at once; that J.K.Holland said
7 he wanted it cut within a year, and A.A.Holland said that
8 he thought he could do that, but that he wanted a little
9 longer time, and wanted to know if J.K.Holland would give
10 him two years, to which J.K.Holland finally consented?
11 A. He did not say it before me. I don't know what they
12 did on the outside. I do know I heard Mr. A.A.Holland
13 speaking of placing the mill up there near Frank Gordon's
14 some time in the near future. At that time he anticipated
15 cutting that timber, I suppose.
16 Q. Do you remember any part of the conversation I repeated?
17 A. I don't remember any part of the conversation.
18 Q. Do you remember A.A.Holland saying to J.K.Holland "Yes,
19 if I don't cut it in two years the lumber is yours back?"
20 A. No, sir, I don't remember it.
21 Q. Who read the deed to J.K.Holland?
22 A. I say I think I read it - went through it when I
23 filled in the blank form.
24 Q. That is the way you read it?
25 A. I think that is the way I read it.
26 Q. I now hand you the J.K.Holland deed. Please examine the

1 clause referring to the time in which the timber could be
2 out. You stated that no additions or alterations have
3 been made in this deed. Please explain why the letter "Y"
4 should be added to the letters "part" in the next to the
5 last line of that paragraph, and afterwards the words "the
6 time said party of the second part begins to manufacture
7 said timber into wood and lumber" are stricken out?
8 A. This is eliminated from the contract entirely.

9 NOTE: Referring to the printed words stricken
10 out.

11 Q. Do you not remember Mr. J.K.Holland saying, while you
12 were reading the deed to him, that he wanted the time to be
13 begin from the date of the contract, and not from the time
14 that the timber was begun to be cut?

15 A. That reads from the date of the contract in here.

16 Q. Just answer the question.

17 NOTE: The question is read.

18 A. No, I do not.

19 Q. Does it not appear to you that the words inserted over
20 the printed words stricken out, and which words extend along
21 the margin of the deed, were written with a different pen,
22 which seems to have a broader nib than the other words in
23 the contract? A. It does not seem so to me.

24 Q. Look at the word "three" in the writing, and explain
25 what the ink which seems to be about that word means?

26 A. I do not see any blot about it.

Q. Now, as to the Milteer deed: I understood you to say

1 in your direct examination that you did not remember who
2 dictated the terms of this deed, further than both Milteer
3 and A.A.Holland agreed to it; is this correct?
4 A. It is correct.
5 Q. You also said "I think if I read the deed it was read
6 in full." Do you remember, of your own knowledge, about
7 reading this deed, whether you read it, or not?
8 A. I say, I don't remember whether I read it through,
9 only in the filling in - in reading over the clauses and
10 filling in.
11 Q. You say you don't remember hearing Mr. Milteer and
12 Mr. Holland talk about the money panic and the Presidential
13 election? A. No, I don't remember any
14 conversation about that.
15 Q. Do you remember the circumstances under which Frank
16 Gordon signed his deed?
17 A. I think he signed it in his house, the morning we were
18 around making these deeds.
19 Q. You said in your direct testimony that you did not
20 know if the contract was read to him, or not; "It may have
21 been that he signed the deed, and allowed me to fill it in
22 afterwards." Do you remember whether you filled the deed
23 in that day, or not? A. I do not.
24 Q. Do you recollect the incident of the funeral, or of the
25 child being dead? A. I remember that there was somebody
26 sick or dead at his house that morning.

1 Q. Both parties were in a hurry, were they not?
2 A. We stayed there some several minutes. I don't
3 remember, as I said before, whether the contract was filled
4 in, or whether they agreed to the terms of the contract, and
5 I filled it in afterwards - that special one.
6 Q. You say Mr. A.A.Holland dictated the terms of the deed
7 from J.O.Everett to Crocker Bros?
8 A. Yes, sir.
9 Q. Why was this deed made to Crocker Bros?
10 A. I don't know.
11 Q. Did J.O.Everett understand that he was selling his
12 timber to Crocker Bros? A. Yes, sir.
13 Q. How do you know? A. When he read the deed,
14 or when I read it to him, I don't remember which, - he is a
15 man who can read as good as I can - he knew who he was
16 selling to.
17 Q. When was this deed signed, and where?
18 A. It was signed in my office, at Holland, I think, in
19 March. I think the date was the 21st of March, 1904, or
20 1903, I don't remember which. It was the 21st day of
21 March.
22 Q. The date the deed bears?
23 A. Yes, sir.
24 Q. At what part of your office?
25 A. I don't remember whether on the floor, or in the corner,
26 or at the ceiling, or on the wall, or at the desk, or where.

Q. Who was present?

A. I was.

Q. What time of day was it?

A. I don't know.

Q. Who came in with J.O. Everett?

A. I don't remember.

Q. What kind of pen did you use?

A. I don't remember.

Q. From where did you get the contract?

A. Out of my desk drawer.

Q. Which drawer? A. The middle drawer.

Q. For how long had it been filled out?

A. I don't know.

Q. Where was A.A. Holland when he dictated to you the terms of this deed?

A. I don't remember whether at his house, or down at the office.

Q. Did he not write you a note in which he set forth the terms of the deed, and you made up the terms of the deed from that? A. I don't know.

Q. Did A.A. Holland give you the terms of the Everett deed and the Hare deed at the same time?

A. I don't remember.

Q. Did Everett and Hare sign at the same time?

A. I don't think they did.

Q. Did they sign on the same day? A. I don't think they did, but I am not sure. It was along about the same

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1 time.

2 Q. Who else sign the deed from J.O.Everett?

3 A. I think Dr.Holland or A.Edwards, I think.

4 Q. Do you remember whether Dr.Holland was present when

5 Everett signed? A. I do not. I do not think

6 he was. I think I carried it up to his office, and got him

7 to sign it.

8 Q. Do you remember whether Everett's name was signed

9 to the deed at the time Dr. Holland signed it?

10 A. Yes, I think it was.

11 Q. Who gave Everett the money for this deed?

12 A. A.A.Holland, I think.

13 Q. Did you see it? A. No.

14 Q. Do you know how much it was?

15 A. I do not.

16 Q. Do you know when and where it was?

17 A. I do not. I think Dr. Holland held a deed of trust

18 on the place, and he had to pay him a certain amount of money

19 before he could pay anybody else.

20 Q. Were those deeds complete at the time of their signature?

21 A. Yes, they were complete.

22 Q. You say these parties knew that they were selling the

23 timber to J.D.Crocker & Bro?

24 A. I suppose so.

25 Q. Please examine these two deeds, the deeds of Everett

26 and Hare, and state if the words in both of them "J.D.Crocker

1 & Bro" are in your handwriting?

2 A. No, sir.

3 Q. Do you recognize the handwriting?

4 A. I think I do.

5 Q. Whose is it? A. It looks like Mr.A.A.Holland's.

6 It may not be, though.

7 Q. Do you know when that was put in there?

8 A. I do not.

9 Q. Where was the Hare deed signed?

10 A. In my office.

11 Q. Is there any such firm as J.D.Crocker & Bro?

12 A. I don't know.

13 Q. Are not the initials of Crocker Bros. James E.Crocker
14 and Benjamin D.Crocker?

15 A. I don't know.

16 Q. Did Emma Hare appear before you, and sign this deed,
17 at the same time her husband did?

18 A. I don't remember.

19 Q. Do you remember the day, or time of day, that they
20 came before you, or either of them?

21 A. I do not.

22 Q. Did they come to your office, or did you go to their
23 house? A. They came to my office.

24 Q. Do you remember any of the circumstances under which
25 they came to your office? A. I do not.

26 Q. How do you happen to remember that they signed in your

1 office? A. Because I did not go out of
2 my office. I did not go to their house, and I know that
3 they did not sign any where else but my office.

4 Q. If you know that they came to your house, can't you
5 tell me whether they came together, or what time, or other
6 details? A. No.

7 Q. You remember nothing except that they came to your
8 office, and signed?

9 A. No.

10 Q. Don't you say that they came to your office because
11 you have no recollection of going elsewhere?

12 A. That is what I say, because that is where I do business,
13 unless I go off in the country.

14 Q. And you suppose that they must have come to your
15 office to sign it?

16 A. Yes, sir.

17 Q. You know Emma Hare, do you not?

18 A. Yes, sir.

19 Q. It is not probable that another woman impersonated
20 Emma Hare, and signed before you?

21 A. I don't think so. She has a sister very near like
22 her, but I do not think anything of that kind could have
23 been done. I think I know her.

24 Q. Are you quite certain that that signature, and that of
25 her husband, was affixed the date it bears, the 21st of March?

26 A. No, but I am quite certain that they affixed it the date
of the acknowledgement, whatever that is.

1 Q. Emma Hare and her husband both testified that at that time
2 she was pregnant, and was not going from her house, and that he,
3 the husband, had gone to Portsmouth on the 21st of March. What
4 have you to say about this?

5 A. Nothing at all.

6 Q. Do you recall whether Emma Hare was pregnant when she
7 signed this deed before you? A. No sir. I think it would
8 be hard to tell whether she was pregnant, or not, if you know her.

9 Q. She gave birth to a child within a month. If that is true,
10 could not it have been observed? A. I don't think so,
11 She looks as big as a whiskey barrel all the time, whether she
12 is pregnant or not.

13 Q. Do you recall whether the deed of Jehn Rawles was read
14 by you or by him? A. I don't remember. I think it was
15 read when we went there filling in the blanks. I think the
16 whole thing was read, but I am not sure.

17 Q. As you went over it? A. As we went over it.

18 Q. Now, as to the Harris deed, do you recall who dictated
19 the terms of that deed? A. I think both parties to the
20 contract did.

21 Q. I mean which one of them spoke? A. I do not.

22 Q. Was this deed read over after it was completed?

23 A. I think Harris read it after it was completed.

24 Q. Do you recall where Harris was standing while you were
25 filling out the blanks? A. I do not.

26 Q. How much did Harris receive for that timber? A. I don't
remember.

1 Q. Was the check given at that time?
2 A. I don't remember.
3 Q. Has this deed been altered? A. I don't remember.
4 I do not suppose it has.
5 Q. Please examine the figures \$65; does not it appear that
6 \$35 was changed to read \$65?
7 A. It looks like there has been a change in it.
8 Q. Who made this change? A. I did it.
9 Q. When? A. I think I did it right there
10 in his house, so far as I know.
11 Q. Why? A. I suppose they told me one thing,
12 and then told me another; I suppose so.
13 Q. Have you no clear recollection of that alteration?
14 A. I have not. I never knew anything about it, or thought
15 about it.
16
17 RE DIRECT EXAMINATION
18 By Mr. Burgess:
19 Q. Mr. Joyner, in speaking of the execution and delivery
20 of the deed of one of the witnesses, I think it was
21 Anthony Holland, you said you did not recall whether the deed
22 had been filled out before it was signed, or that he signed
23 it and left it with you to fill out. If the latter, would
24 you have accepted the deed, and agreed to fill in the blanks
25 without a clear understanding of the contract?
26 A. I would not.

Q. At the time you were filling out these contracts, was there any question in your mind at all as to whether there was a misunderstanding between the parties?

A. Not a bit.

-----oOo-----

M.E.GAY, being duly sworn, on behalf of the defendants, testified as follows:

Examined by Mr. Holland:

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

A. My name is M.E.Gay; age forty-three; residence Suffolk; occupation lumber man. I know the parties to this suit. I was at one time employed by the defendant company, and am now.

Q. Mr. Gay, state whether or not you estimated this line of timber for the Cramer Company?

A. I did.

Q. At the time you were estimating it, did you see any of the parties?

A. I only saw one, I think; I don't remember what his name was.

Q. State whether or not, while estimating it, you heard any talk, or received any information as to any dispute with reference to the time within which to cut it?

A. None whatever.

Q. After you had estimated it, you made your report to the

1 Cramer Company? A. I did.
2 Q. And upon your estimate it was purchased?
3 A. Yes, sir.
4 Q. State whether or not, Mr. Gay, the Cramer Company, at
5 that time, had other large timber holdings?
6 A. Yes, I suppose they had some where between twenty-five
7 and thirty million feet.
8 Q. Where were they engaged at that time principally?
9 A. In North Carolina.
10 Q. Can you tell whether or not the time was short, and
11 whether they were making an effort to cut the timber in North
12 Carolina before coming to this?
13 A. Yes, we had some short pine stuff in North Carolina, and
14 we were making an effort to get through. We had one crew
15 on the Suffolk and Carolina and one on the Seaboard.
16 Q. Did the Cramer Company make more than their usual
17 effort to cut out the other line of timber to reach this?
18 A. Well, no, sir.
19 Q. State whether or not some time in the early spring of
20 1906 you went to see these parties with reference to an
21 extension of time? A. Yes, sir, I went
22 up there, I think, some time in March or the first of April.
23 Q. Did you offer to pay them, at that time, the six per
24 cent interest on the original purchase price?
25 A. The first time I only saw three parties, which were Mr.
26 Rawles, Jackson Howell and Mr. Milteer.

Q. Were they notified at that time that the company claimed the additional two years within which to cut it?

A. Yes, sir.

Q. And were they not told that the company was ready and prepared and willing to pay the additional interest at any time?

A. They were.

Q. Now, Mr. Gay, you stated that you saw Jackson Howell on that occasion?

A. Yes, sir.

Q. That you went to his house?

A. Yes, sir.

Q. Please state whether or not Howell made any complaint to you at all about any misunderstanding as to the time within which the timber was to be cut?

A. None whatever.

Q. Is it a fact, or not, that his only contention was that the three years had expired, and that they had not paid the interest on the two years, and, therefore, the time was out?

A. Yes, sir.

Q. Did he make any complaint at all?

A. None whatever.

Q. At that time, as I understood you, you were making an effort to get an additional two years within which to cut it?

A. Yes, sir, which would make a four years extension.

Q. Why did you want the additional two years?

A. We wanted to finish on the Seaboard road to save the expense of moving the crew backward and forward, which it would have taken us the balance of this year to do that.

Q. State what objection, if any, Howell made to the timber

1 being cut by the Cramer Company, at that time?
2 A. He did not really make any objection at all, only he
3 said the time was out, and when we asked for the additional
4 two years, he said he would see the other parties, and get
5 together, and let us know.
6 Q. What statement did he make to you about the improper
7 preparation of the deed?
8 A. None at all.
9 Q. What claim did he make to you about the additional
10 two years being added in the deed?
11 A. He did not make any claim, only said the time was out.
12 Q. Why did he say the time was out?
13 A. I suppose because we had not paid the interest right
14 on the day that the three years ran out. I presume that
15 was why he said that.
16 Q. Did you go to see any of these parties subsequently?
17 A. Yes, sir.
18 Q. State, if you know, which one of the parties accepted
19 the interest, and consented to the renewal of the two years?
20 A. None of them consented to any further time than on the
21 contract, the two years. None would give us any additional
22 time further than the contract ran.
23 Q. Who accepted the interest?
24 A. I think Mr. J. A. Rawles, E. T. Hare and J. O. Everett, I
25 think. There were five of them, but I can't remember the
26 names of all of them, but I know Hare and Mr. Rawles were two

1

of them.

2

Q. State whether or not you afterwards went to see Mr.

3

J.K.Holland and Mr. D.H.Milteer and A.J.Howell, and Anthony

4

Holland, and offered to pay them the interest?

5

A. Yes, sir, the same day I went to Mr. Rawles.

6

Q. And they declined to accept it?

7

A. Yes, sir.

8

Q. Did they decline because you did not offer the money,

9

or what did they say? A. They said, from what

10

I understand, that the time was out, and we had no right

11

to cut it simply because we had not paid the interest.

12

Q. Your understanding from the parties all along was that

13

they objected to your cutting it because you had not paid

14

the interest before the expiration of the three years?

15

A. Yes, sir.

16

Q. Is it a fact you went to all these parties, and told

17

them you were ready and willing to pay the interest?

18

A. I think I went to every one of them.

19

Q. Now, Mr. Gay, what is the custom among timber men

20

with reference to securing extensions in addition to the

21

original term?

22

BY MR. WITHERS: The question is excepted to.

23

By Mr. Holland:

24

Q. What is the usual custom among timber men in taking

25

deeds as to getting additional time by paying six per cent

26

interest?

A. We generally take a deed, and

1 have the party give us three years time or five years, and
2 additional time by paying six per cent.

3 Q. What is the usual compensation given for extension of
4 time within which to cut timber?

5 BY MR. WITHERS: The question is excepted to.

6 A. Six per cent upon the purchase price.

7 By Mr. Burgess:

8 Q. From your knowledge as a woodsman and lumber buyer, do
9 you think that is a fair consideration for the increased growth
10 every year?

11 A. That is what the lumber men
12 say, and that is what is always taken to be a fair price.

13 CROSS EXAMINATION

14 By Mr. Withers:

15 Q. Do you mean it is estimated that a tree will grow six
16 per cent each year? A. It will grow six per
17 cent on the dollar, yes, sir.

18 Q. What do you mean by a tree will grow six per cent on the
19 dollar? A. We buy standing timber, and if
20 it is worth \$1,000 to-day, twelve months from to-day it will
21 be worth \$1,060.

22 Q. You mean each tree grows six per cent?

23 A. No, I do not mean that each tree grows six per cent.

24 Q. What do you mean? A. I say if we bought a piece
25 of standing timber to-day for \$1,000, and twelve months after-
26 wards we value it \$60 more than when we bought it.

1 Q. What makes the increase value?
2 A. The growth of the timber.
3 Q. Then you mean the timber has grown six per cent?
4 A. Yes, sir.
5 Q. That is an invariable rule, is it?
6 A. Yes, sir.
7 Q. It is estimated that each tree grows six per cent each
8 year?
9 A. I do not exactly understand
10 when you talk about each tree growing six per cent. If that
11 tree was worth one dollar, it would be worth six per cent
12 more. I do not understand the way you put the question
13 exactly, that each tree would grow six per cent. The way
14 you are putting the question is that if each tree was worth
15 a dollar, that tree would grow six per cent.
16 Q. When you went to see Howell the first time, in March or
17 April, I understand that he claimed that the time was up,
18 and you could not cut it; that you wanted to get five years
19 extension?
20 A. No, we wanted four years -
21 two additional years.
22 Q. And that he declined to give it?
23 A. Yes, sir.
24 Q. You say he would not take the interest money?
25 A. Yes.
26 Q. And you supposed it was because that he claimed the time
was up?
A. Yes, sir.
Q. And you supposed he claimed the time was up because the
interest money had not been paid on time?

1 A. Because it had not been paid. When I first went
2 and talked to him, I thought he would take the money, and
3 he never said anything. I wrote the check out, and handed
4 it to him, and he said "I will not take it." I took
5 the check back, and tore it up, and I reckon he will tell
6 you the same thing.

7 Q. And your understanding was that he claimed the time
8 was up, and you had no right to the additional time?

9 A. Yes, sir.

10 Q. You say on a later date you went there, and offered
11 him the interest money for the two years extension?

12 A. Yes, sir.

13 Q. When was it? A. At the same time I wrote
14 him the check.

15 Q. That was the last time you went there?

16 A. No, I went there after that.

17 Q. I asked you about the last time?

18 A. I went there again after that. I think it was the
19 second or third of July, but I will not say positive; it
20 was some time along about that time, and I think (I will not
21 be positive) but I think I carried him the cash money, and
22 offered it to him, and he refused to take it, and I notified
23 him I would go to work on the land, which I did on the
24 fourth day of last July, and he come out about one or two
25 o'clock, and stopped me, and I was mighty glad of it, because
26 I was getting mighty hot.

1 Q. You say you offered to pay him the interest at that time.
2 Do you recollect how you offered to pay it, whether in cash
3 or by check?
4 A. I think the last time I offered to pay him in cash.
5 Q. You are not certain about that?
6 A. No, I am not certain, but the first time in check.
7 Q. How much did you offer?
8 A. I don't know, but it was six per cent on the purchase
9 price. I don't recollect what the purchase price was.
10
11 RE DIRECT EXAMINATION
12 By Mr. Burgess:
13 Q. Did Howell make any objection to the check?
14 A. None whatever.
15 Q. Did he demand that you make it what is known as legal
16 tender in certain currency?
17 A. No, sir, he did not.
18 Q. Several questions have been asked you about why Howell
19 said that the time was up. I want you to be careful: If
20 you do not remember, say so, but if you do remember, give the
21 reasons as stated by Howell for saying that the time was up -
22 that is whether it was due to the fact that he only granted
23 that much time in his contract, or whether he said that it
24 was because you had failed to pay the interest on time, or
25 whether he gave some other reason, or if he gave any reason
26 at all?

BY MR. WITHERS: The question is excepted to as leading.

A. To the best of my recollection, I would not be positive the objection was - I am positive of that, the objection was that we had not paid the interest in time.

By Mr. Burgess:

Q. Was that the only reason?

A. That is the only reason I know of.

Q. Then, as I understand you, you are positive that the objection he gave, and the only objection he gave, about extending the time, or accepting the interest, was that you had failed to pay it in time?

A. Yes, sir.

By Mr. Holland:

Q. At that time what was said about seeing the other parties, and considering the matter, and letting us hear?

A. That was the first time - that they would all get together, and talk the matter over, and see if they would give us the additional two years we asked, and let us know. We waited and waited until, I think, the 21st of June, when I went up and paid Mr. Rawles and the other parties.

Q. Then, as a matter of fact, you were waiting to hear from these parties as to what they would finally decide to do?

A. Yes, sir, and when I went, these parties refused to take it on the ground that we had not paid the interest.

An adjournment at 12:45 was taken until two o'clock.

-----oOo-----

AFTERNOON SESSION

April 23, 1907.

THOMAS H. BARNES, being duly sworn, testified

as follows:

Examined by Mr. Burgess:

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

A. Thomas H. Barnes; some where about 74; residence Suffolk; no occupation; I know the parties to this suit.

Q. Doctor, are you personally acquainted with Mr. Elihu Joyner? If so, how long have you known him?

A. I have been knowing him ten or fifteen years I have been knowing him every since he came to Holland. I don't know how long that has been.

Q. Are you well acquainted? A. I think I am.

Q. What is his general reputation, Doctor?

BY MR. WITHERS: The question is excepted to in that form.

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By Mr. Burgess:

Q. General reputation for honesty, truth and veracity?

A. I think he is a square honest man, absolutely so, so far as I know and believe. I have had transactions with him, and never found him anything else but that, and never saw any disposition of crookedness about him, so far as money transactions are concerned, or anything else. I think he is an honest man.

BY MR. WITHERS: I move to strike out.

By Mr. Burgess:

Q. Are you personally acquainted with Mr. A.A.Holland, of Holland, Virginia? A. Yes, sir.

Q. How long have you known him?

A. I have known him all his life.

Q. What is his general reputation for honesty, truth and veracity? A. Good. I never heard it questioned.

Q. Either as to his honesty, truthfulness or veracity?

A. I never heard either questioned.

Q. Doctor, state, if you know, the general reputation among his neighbors of Elisha Hare? I do not mean what you know, or any information you may personally have, but his general reputation in the community?

A. Well, Elisha, like a good many others, is not specially reliable in money matters. I don't know much about him personally, although I have been knowing him a long time.

Q. I am not asking you about your personal knowledge, but his general reputation among his neighbors, or those with whom he is acquainted?

A. He is not supposed to be very reliable, so I hear.

Q. Do you know the general reputation of James O. Everett?

A. I don't know very much about him. I never heard anything about him. I know him when I see him, but never heard anything particular against him.

Q. Then you can't testify as to his general reputation?

A. No.

CROSS EXAMINATION

By Mr. Withers:

Q. Have you often heard the reputation of Hare discussed by your neighbors? A. No, I have not.

Q. You said that some people think he is not very reliable. Do you mean by that, that he does not pay his debts promptly? A. I refer to that more particularly,

and yet I have heard people say that he would tell you anything, and you would not know whether to rely upon it, or not. I never tested him that way, myself.

Q. Doctor, if he were to make his statement on oath that he was not at a certain place at a certain time, would you believe it? A. Well, if he understood the import of an oath, I should believe it. I doubt very much whether he would understand what an oath meant, or not.

Q. Do you think that he is mentally unsound?

A. No, I do not.

Q. How do you mean that he does not understand?

A. Very few people know what an oath means.

Q. Do you know Mr. John A. Rawles?

A. Yes, sir, certainly I know him.

Q. Do you know his general reputation through the community?

A. Yes; good, so far as I have ever heard or know.

Q. Do you know the general reputation of A.J. Howell for truth and veracity?

A. Yes.

Q. Yes.

Q. How is that? A. Good.

Q. Do you know the general reputation, for truth and veracity, of D.H. Milteer?

A. Yes, it is good so far as I have ever heard or know.

Q. Do you know the general reputation of J.K. Holland for truth and veracity?

A. Yes, it is good, so far as I know.

Q. Do you know the general reputation for truth and veracity of Joseph P. Holland?

A. Yes.

Q. State what it is? A. Good.

Q. Do you know the general reputation of Frank Gordon, a colored man?

A. I never heard anything against

Frank Gordon in my life. I don't know much about his private character.

Q. What is the general reputation of Anthony Holland for truth?

A. Good.

1 Q. Do you know the general reputation of Emma Hare for
2 truth and veracity - that is Elisha Hare's wife?

3 A. I don't know much about that. I know nothing particu-
4 larly against it.

5 Q. Do you know the general reputation of J.L.Harris, a
6 colored man, who used to be a preacher up that way?

7 A. No, sir, not particularly, not to give any opinion. I
8 never heard anything particularly against him.

9
10 -----oOo-----

11
12 NOTE: The defendant announces that it has
13 no further testimony to-day, but that it does not
14 rest its case.

15 Thereupon counsel for the plaintiff offers the
16 following testimony in rebuttal:

17
18 JOHN RAWLES, recalled, in rebuttal, testified as
19 follows:

20 Examined by Mr. Withers:

21 Q. When Mr. A.A.Holland was on the stand, he testified
22 that your testimony with reference to the conversation with
23 regard to a Presidential election and money panic occurred
24 in the fall of 1902, and that you introduced the subject while
25 standing at the edge of your woods, and that when the con-
26 tracts were written in February, 1903, that nothing whatever

1 was said at that time between you if the lumber market should
2 be despressed, or if a money panic should occur. Please
3 state if you had any conversation with Mr. Holland in the
4 fall of 1902, in which this subject of the money panic and
5 the Presidential election was talked about?

6 BY MR. HOLLAND: The question is excepted to on
7 the ground that the evidence is not in rebuttal.

8 A. I never saw Mr. Holland to speak to him except as
9 passing, and so far as the timber was concerned, Mr. Holland
10 never spoke to me about it until I think the last of January
11 that he came there. I know it was the last of January -
12 not the last of January, but during the month of January.
13 When he came there it was the first of my knowing that he
14 wanted to buy the timber. He said Jonas Lawrence told
15 him coming down on the train one night that I had a piece
16 of timber I would sell. Mr. Holland then came with Jim
17 Howell to go over the woods. Do you want me to tell the
18 whole thing?

19 Q. No, just answer my question?

20 A. Well, about the money panic, Mr. Holland only wanted
21 three years on the timoer. When he come to fill out the
22 contract, prior to that I had refused Jonas Lawrence the
23 lumber on the ground that he wanted it for five years, and
24 I would not sell it to any one for five years. Mr. Holland
25 come to fill out the contract, and they begun to fill it
26 in, and when they came down to the time I remember the
Presidential campaign came off, and he said "Suppose there

1 would be a money panic, as there was sometimes, or there
2 would be a depression, which would not justify him in putting
3 it on the market, how about paying six per cent interest."
4 I said I did not want any one to pay me any money and not
5 get value received, and he filled it in on that ground. Mr.
6 Elihu Joyner was the man filling it in, and he put it in,
7 I suppose, and he passed it over to me. Where the insertion
8 was to begin, and he said you can begin to read here, and
9 I read down to the railroad, and all necessary tie timber
10 free of charge.

11 BY MR. HOLLAND: The answer is objected to upon
12 the ground that he has made the same statement
13 on his direct examination, and this is not in
14 rebuttal of anything said by A.A.Holland.

15 By Mr. Withers:

16 Q. My question is this: Did A.A.Holland have the conver-
17 sation with you in the fall in which this money panic and
18 Presidential election was mentioned?

19 A. No, sir. It was not until the contract was drawn up,
20 and that was the date.

21 Q. He stated that you introduced the subject of the money
22 panic and the Presidential election; is that true?

23 A. No, sir. What would it amount to me if I had the
24 money? I was not going to manufacture the lumber, and put
25 it on the market. That would not amount to a row of pins
26 with me. That was the way of getting the two years.

1 Q. According to Mr. Gus Holland, he said that you agreed
2 in the fall or winter of 1902, in your woods, that he
3 could have three years in which to cut the timber, and two
4 more years by paying interest on the purchase price; is
5 that true?

6 A. No, sir. I did not see
7 him in the fall. I did not see him until January, the
8 first time he ever come in my woods, to my knowledge.

9 Q. At the time you and he walked through the woods to-
10 gether, did any such conversation as this occur - he asked
11 you how much time you would give him, and you said three
12 years, and he said that he wanted longer time, and you
13 replied that if a panic should occur you would give him
14 two years longer, and he then said all right, to which
15 you replied "Now, what do you mean by a money panic", and he
16 said "I mean, Mr. Rawles, I will take it if I want it?"

17 A. No. The time was only mentioned twice; that was when
18 we got to the woods, before we ever put a foot in the woods,
19 that three years was as long as anybody could have it, that
20 I would not sell it to my father for five years, and if he
21 did not want it at three years we would not go into the
22 woods, and the time the contract was filled out. He had a
23 ten day option on it.

24 Q. State anything you wish to in connection with this
25 case?

26 A. About the lumber being estimated:
He had Paul Jones and Jonas Lawrence to come there last May.
I suggested to Mr. Holland and Mr. Gay to let Mr. Gay come up.

1 and we would go there and estimate it, but so far as my having
2 a man to go over it before Gus Holland bought it, there was
3 no such thing done. I sold it without asking him how much
4 he thought there was, or anything of the kind.

CROSS EXAMINATION

By Mr. Holland:

Q. Your suggestion about having the timber estimated
was made at the time the Cramer Company was seeking to get an
additional two years time?

A. Yes, I understand. Mr. Gay said he would have a man
to come up, and I said I would have it estimated any way.

Q. And your purpose in having it estimated was to know
what was a fair price to charge the Cramer Company for the
two years addition? A. Yes, sir, and as I charge
for four years.

Q. But subsequently you settled with the Cramer Company,
and accepted the interest for the two years, and got rid
of it? A. Yes, sir.

-----oOo-----

D.H.MILTEER, recalled in rebuttal, testified
as follows:

Examined by Mr. Withers:

Q. Mr. D.J.Daughtrey testified that he met you last year,

1 and had a conversation with you about these timber contracts,
2 in which you stated that Gus Holland had three years in which
3 to cut your timber and two more years, by paying interest.
4 Please state what is your recollection of that conversation,
5 and when it occurred?
6 A. The first time I recollect having any conversation be-
7 tween Dock Daughtrey and myself, was since Christmas, in
8 Dr.I.A.Luke's office, and I asked it to go in concerning
9 J.K.Holland's timber. I have been told that his time was
10 shorter than anybody else, and I asked him about it, and he
11 said Mr. Gus Holland told him so. He asked how about
12 yours, and I said he has mine the same way as the others,
13 as I understand it, or has it three years and two more by
14 paying six per cent interest on it. I do not think there was
15 any more said about it. He said he did not treat you no
16 worse than he treated me.
17 Q. Did you mean to tell Mr. Draughtrey that these contracts
18 in which you granted three years within which to cut the
19 timber and two more years by paying interest, express
20 the real agreement between you?
21 A. No, sir. That was the agreement I understood at the
22 time I told him. That was either in January or February,
23 but it has been since Christmas, but I do not recall the
24 time.
25 Q. Do you mean that is the way the deed read?
26 A. That is the way I found it at the clerk's office, that the

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1 deed read, but not as our bargain was.

2 Q. Did Mr. Daughtrey understand that was what Gus Holland

3 claimed, and what the deed read, and not what you understood

4 it? A. Yes, I understood it so.

5 Q. And then he said Holland had treated you no worse

6 than he had treated him?

7 A. Yes, sir. That was the first time I talked with

8 him, and once I passed by where he was at work on the

9 railroad. He was cutting out a right of way, and I passed

10 by where he was, and he said "I am cutting out a railroad

11 across you", and I said "Yes, I see you are", and he said

12 "I am just hired here to do it", and I said "Yes; under the

13 bond and contract that stood against us they had a right

14 to cut it, I suppose, and to go ahead."

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18 J.K.HOLLAND, in rebuttal, testified as follows:

19 Examined by Mr. Withers:

20 Q. Mr. Gus Holland testified that you came to Holland to

21 ask him to buy your timber; is that true?

22 A. No, sir, it is not. He came to me as much as four

23 or five times before I would ever agree to sell it to him.

24 I told him I did not want to sell it under any price. It

25 was growing, and I did not want to sell it.

26 Q. Mr. John Norfleet testified that he met you in a bar

1 in Suffolk, when you were taking a glass of beer together,
2 and you said you were in trouble, and he said how is that,
3 and you told him that Gus Holland has three years in which
4 to cut my timber and two more years by paying interest.
5 Please state what is your recollection of this conversation?
6 A. No, sir, that is not so. I never told Mr. Norfleet
7 anything about it. I used to go in to see my nephew most
8 every time I came down. I think Mr. Norfleet came and asked
9 me to take a glass of beer with him, but so far as Mr.
10 Daughtrey asking me to take a glass of beer, I did not, and
11 so far as the timber is concerned, I never mentioned it in
12 any way shape or form.

CROSS EXAMINATION

By Mr. Burgess:

Q. Where were you when you first discussed selling the
timber? A. At home, back of the field,
pretty close to where the timber was, cutting wood, and
I did not know what he was coming for.

Q. You never had any discussion with him in the village
of Holland? A. No, sir, he never mentioned
it to me nor I to him.

-----oOo-----

FRANK GORDON, (Col), in rebuttal, testified as follows:

Examined by Mr. Withers:

Q. Mr. Sam Hardy testifies that you came to his store after these deeds were signed, and that he picked up the deed that you had signed off Mr. Holland's desk, and that you asked him to read it to you to see what was in it, and that he read it to you, and it read that Mr. Holland would have three years in which to cut and remove the timber, and two more years by paying interest. Please state if that is correct?

A. No, sir, I never have been at Mr. Hardy's in my life, and asked him to read a deed to me. I don't know that he ever saw it. I don't know that he had one. I never said a word to him about one, and neither had he to me.

Q. Have you seen the deed which you signed since you delivered it to Mr. Holland?

A. No, sir, I never have seen it; if I did, I didn't know what I was looking at.

Q. Have you ever heard it read since that time?

A. No, sir, no more than having it read to me in the clerk's office.

Q. Are you positive you never asked Mr. Sam Hardy to read this deed to you? A. Yes, sir.

Q. Are you certain that he never read it to you?

A. Yes, sir.

Q. Do you remember going to Mr. Hardy's store, soon after

1 this transaction, when he asked you to pay him some money,
2 and you said the money you had gotten for the timber was
3 paid to somebody else, and you could not pay him any?
4 A. I remember his speaking to me about the money, some
5 time after the time I had sold the timber, and had delivered
6 the money to the man who held the deed of trust on the land,
7 and I stated to him "Mr. Hardy", I says, "I owe you some,
8 I know, and I would pay you if I could, but I ain't just
9 able to pay you now. The money I got for the timber,
10 I had to pay the man who held the deed of trust on the land",
11 but how long after I don't know.

12 Q. Where was this conversation?

13 A. I don't know, but at his store some where, inside or
14 outside.

15 Q. On that occasion, did Mr. Hardy read a paper or deed
16 to you then? A. No, sir, I never asked him to
17 read nothing, and he never read anything.

18 Q. And you are absolutely certain of that?

19 A. Yes, sir.

20 Q. There is no mistake about it?

21 A. No, sir.

22 CROSS EXAMINATION

23 By Mr. Burgess:

24 Q. How often do you go into Mr. Hardy's store?

25 A. I go there some times once or twice a month. Sometimes
26

1 I don't go there once in two months.

2 Q. How often did you go there during the spring of 1903?

3 A. I could not state to you, to save my life, how often

4 I went, but I know I went there some time in that year.

5 Q. You did owe that money at that time, didn't you?

6 A. Yes, sir.

7 Q. You do remember a conversation which took place between

8 you and him, in which you told him you could not pay him

9 the money that came from the sale of this timber?

10 A. Yes, sir, I remember that.

11 Q. Where were you standing when this conversation took

12 place? A. I don't know.

13 Q. Who was present? A. I could not tell you. I

14 know there were lots of people around there.

15 Q. Who brought up the question? Did you begin to talk about

16 it, or Mr. Hardy? A. Mr. Hardy.

17 Q. What did he say to you?

18 A. He asked me concerning paying him some money on what

19 I owed him.

20 Q. Do you remember how he brought up the subject?

21 A. He asked me to pay him some money, and I told him I

22 did not have any, and he said "You sold your timber," and

23 I said "Yes, but I had to turn it over to the man who held

24 the deed of trust on the land, and I did not have any, that

25 I had paid it out."

26 Q. You don't remember where you were standing, or where

he was standing? A. I don't remember whether

1 inside or outside of the store, but I know it was at his
2 place. I don't know whether it was outside, or whether
3 he was going to Mr. Gus' to get his supper (it was in the
4 afternoon), and I don't remember whether it was in the
5 store porch, or where. I was there, and he asked me
6 concerning the money, because he said he was informed that
7 I had sold my timber, and I said I had. I never asked
8 him about reading the contract, because I did not know that
9 he ever saw one.

10 Q. Who first came to you to pay you the interest for
11 this extension? A. I saw Mr. Gay, was the
12 first man I ever saw.

13 Q. What reason did you give him for not taking his money?

14 A. He came to me. I was at Mr. Britton Edwards, and he
15 said "I come to get you to sign this contract for the
16 interest on your timber." I said "You don't owe me any
17 interest on the lumber," and he says "Yes, I do, for an
18 extension; all the rest of the parties have signed up but
19 one or two, and they will sign up as soon as I see them, and
20 I want you to sign." I said "I will not sign, you don't
21 owe me any interest for an extension." He said "You
22 had might as well sign, because we are going to cut the
23 timber." I said "I thought you all were going to cut it
24 in the last three years." He said "Very well", and said
25 "You are not going to sign", and I said "No, sir, I had
26 not given any time longer than three years to cut it, and I

1 did not know there was any interest due me to sign it."

2 Q. You did not tell him that he ought to have paid his
3 interest before that? A. No, sir, I did not

4 know anything about any interest until I heard that there
5 was two years more extension.

6 Q. You had never heard of this extension before?

7 A. Yes, sir, I heard of it before I saw him.

8 By Mr. Holland:

9 Q. Did not you get a letter from me about the first of March
10 about this matter? A. Yes, sir.

11 Q. About the first of March? A. Yes, sir.

12 Q. Did you reply to it?

13 A. No, sir, I never answered the letter.

14 Q. Why did not you write to me and tell me that you only
15 gave three years? A. I did not answer the

16 letter because I did not understand it fully why there was
17 an extension. You said Mr. Cramer, I think it was, had

18 three years and two more by paying interest, and I said

19 I know I had not given it to him, and I did not know where he
20 got it from, and, therefore, I never answered the letter,
21 because I didn't know anything about it.

22 Q. When was it you went to the clerk's office and had this
23 deed read to you? A. Sometime during the last

24 year, but I don't know exactly what month.

25 Q. Last year, or the year before?

26 A. Last year, I think, if I am not mistaken, along in the

1 spring, I think.

2 Q. Was it after the three years time had expired?

3 A. Yes, sir, it was after the three years expired that

4 I went to the clerk's office. I heard of it before I

5 went there, but I think it was after the three years had

6 expired that I went to the clerk's office.

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10 P.E. JONES, (Colored), being duly sworn, testified as

11 follows:

12 Examined by Mr. Withers:

13 Q. State your name, age, residence and occupation, and

14 if you know the parties to this suit?

15 A. P.E. Jones; 45; near Holland; farming; I know the

16 parties to this suit.

17 Q. State, in your own way, a conversation you had with

18 Mr. Gus Holland with reference to the time that he had in

19 which to cut the timber from the land of Mr. Tony Holland?

20 A. I was over at Mr. Gus Holland's last year, I don't

21 remember exactly what time. I was there after laying in

22 the crop, between July and August. We cut some logs, and

23 we started away, and he was going down to the store. He

24 said to me "How are the boys getting along," and I said

25 "Getting along in what way," and he said about the timber

26 business. I said I don't know, but I heard that they were

1 in a law suit. I said I didn't know anything about it, as
2 I was not interested, as I was not in it. He said "How
3 about it;" I said "They claim the time is out, and they do
4 not want the lumber out on them grounds". He says "Who are
5 they?" I said "Mr. Tony Holland, and Elisha Holland
6 said they did not give but two years. They said they
7 knew their time was out," so he says "I heard Uncle Elisha
8 signed up again with the Crocker Bros., and I know that
9 they did not sign up with me." He said Mr. Tony Holland,
10 according to my knowledge, is about out, because he gave a
11 shorter time than the rest of them. He said, according
12 to my knowledge, it is about out, because his time was
13 shorter than the rest, and about the others I could not tell,
14 and had to go by the record.

15 Q. He said he knew Tony Holland's time was shorter than
16 the rest? A. Yes, sir.

17
18 CROSS EXAMINATION

19 By Mr. Burgess:

20 Q. When was that? A. July or August, after I had
21 laid by the crop.

22 Q. After the suit had started?

23 A. Yes, sir.

24 Q. What did he say about Elisha and Tony Holland?

25 A. He said Uncle Elisha and Tony Holland gave a shorter
26 time than the rest.

1 Q. He first asked you what the boys were saying?
2 A. Yes, sir.
3 Q. What did you tell him? A. He asked me what were
4 the boys doing. I said "Doing how," and he said about the
5 lumber business. I told him I did not know, but I heard
6 that they were in kind of a law suit about it, and he said
7 what about it.
8 Q. I am not asking you that. Then you said Uncle Elisha
9 Holland and Mr. Tony Holland said that they did not give
10 but two years? A. Yes, sir.
11 Q. What did he say? A. He said Uncle Elisha and
12 Mr. Tony Holland had given a shorter time than the rest, but
13 they had signed up with the Crocker Bros., that they did
14 not sign with him. He said according to his knowledge their
15 time was shorter than the others.
16 Q. You say when that conversation occurred that you had laid
17 by the crops? A. Yes, sir.
18 By Mr. Holland:
19 Q. What did he say about having to go to the record to find
20 out? A. He said he could not tell exactly
21 when it was out, but he would have to go to the record to
22 find out.
23 Q. In other words, while he said the time was shorter, he
24 could not tell until he went to the records to tell?
25 A. According to the sound that is what he meant.
26 Q. That is all you know about it?

1 A. Yes, sir.

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6 VIRGINIA,

7 City of Norfolk, To-wit:

8 I, D.S. Phlegar, a Notary Public for the City of Norfolk,
9 in the State of Virginia, acting by consent of counsel for
10 the purposes in this case in the County of Nansemond,
11 Virginia, do certify that the foregoing depositions of
12 A.J. Howell, John A. Rawles, J.L. Harris, D.H. Milteer, R.E. Babb,
13 James O. Everett, E.T. Hare, J.K. Holland, Joseph F. Holland,
14 Emma Hare, J. Frank Gordon, Katie C. Gordon, A.T. Holland,
15 Lucy C. Holland, James A. Howell, A.A. Holland, J.E. Crocker,
16 D.J. Daughtrey, John Norfleet, Sam Hardy, A.B. Cramer, Elihu
17 Joyner, Thomas H. Barnes, John A. Rawles, D.H. Milteer,
18 J.K. Holland, Frank Gordon and P.E. Jones, were duly taken
19 and sworn to at the times and places and for the purposes
20 in the caption mentioned, and that signatures were waived by
21 counsel.

22 Given under my hand this day of May, 1907.

23

24

Notary Public.

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STENOGRAPHER'S TRANSCRIPT.

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