1909-003
Nansemond Co(Suffolk) Chancery Causes: W.T Jordan et al vs Ann Keeling et al

Warrington, Harrell, Jones, Williamson, Darden, Cartwright, Driver,
Darden, Wilroy, Ricks, Philhower, Kirn

OVERSIZE
Box 4
- 1 Plat

W T Jordan and others
against } In Chancery
Ann Keeling and others.

1900 Jany 25th. Process issued returnable
February Rules first Monday

" Feby. 5th. Process returned executed on
defendants.
Bill filed and decree nisi
against said defendants

" Feby 19th. Decree nisi confirmed and
cause set for hearing.

Chancery Notes

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

Your complainants, W. T. Jordan, S. F. Warrington, W. N. Harrell, F. L Jones, Jeremiah Jones, R. Williamson, A. J. Darden, J. W. Jones, John Cartwright, E. J. Driver, Henry Kirn J. W. Darden and Rebecca C. Wilroy, respectfully complaining show unto the Court the following case: That your complainants are jointly interested with others in a large tract of land in Sleepy Hole Magisterial District, in Nansemond County, Virginia, known as the "Gross Swamp"; that the same contains seven hundred and fifty (750) acres, more or less, and that a survey and plat thereof is on record in the Clerk's Office of Nansemond County Court in Deed-Book No. 1, page 159, that the said "Cross Swamp" was granted to Jacob W. Keeling and others by grant also on record in said County Court Clerk's Office in Deed-Book No. 1, page 162, a copy of which will hereafter be filed herein; that the said tract of land has been held by the owners thereof ever since the grant to the said Jacob Keeling as aforesaid, as a "common", and that the parties having interest therein have, from said time, been using the same as a "common" and have been taking therefrom, necessary farm timber and fire wood; and that the owners thereof heretofore have owned the same jointly and that no division has ever been made thereof.

Recently, Ann Keeling, Joshua Ricks and .....

.....

have undertaken to sell to one Luther Philhower, certain standing timber in said swamp without the consent of the other parties in interest, and without legal right so to do, and the said Luther Philhower, by virtue of same, has entered upon the premises and has cut down and removed large quantities of the standing timber in said swamp; and your complainants are informed he is still cutting, removing, selling and converting into cash, a large quantity of valuable timber from said land; that said acts have been done against the protest of your complainants and all others in interest, and in open violation of your complainants rights; that the said parties are doing, without right or authority, and without permission, irreparable damage to the said property to the great injury of your com-

plainants, and the others in interest, and unless enjoined from further operations, will permanently injure the said property, and make it useless for the purposes for which it has been heretofore used.

Your complainants allege that no party has a right to cut any timber from said land except for farm timber and fire wood, and that the timber now being cut thereon is not being cut for such purposes, but wholly for sale and manufacture into lumber and box the advantage and profit of the parties who are now conducting operations therein as aforesaid.

Your complainants further allege that while some diversity of opinions exists as to the rights of the parties interested in the said swamp, that no one has heretofore undertaken to cut said timber for profit, and that if such sales for profit be allowed, that the said swamp will be made a complete waste and of no value to the parties now interested therein.

In tender consideration whereof, and for as much as your complainants are remediless in the premises, save by the aid of a Court of equity where all such matters are alone and properly cognizable, your complainants pray, that Ann Keeling, Joshua Riaks, Luther Philhower and .... may be made parties to this bill and required to answer the same, but answers under oath are hereby specially waived; that the said Ann Keeling, Joshua Ricks, Luther Philhower and..... ....., their employees, agents, attorneys and all others may be enjoined and restrained from entering upon the said lands, and cutting or removing any timber therefrom except for fire wood, and that the said Ann Keeling, Joshua Ricks, Luther Philhower and their agents & employees ....may also be enjoined and restrained from moving from the said premises any logs already cut thereon and placed upon any high land for the purpose of being hereafter removed; that the rights of the parties interested and as to who are interested therein may be determined; and that all such other further and general relief may be granted to your complainants as the nature of their case may require or to equity shall seem meet.

And your complainants will ever pray, etc.

E. E. Stanley
b.p.

John W. Jones
Jno Cartwright
E. J. Driver
J. W. Darden
Rebecca C. Wilson
Henry Kim

W. J. Jordan
S. F. Warrington
F. L. Jones
Wm. Stanley
Jeremiah Jones
R. Williamson
A. J. Darden

By Counsel

Hon. Judge Prentis

Dear Sir.

We the owners of the Cross Swamp property in Sleepy Hole District of Nansemond Co. Va. do pray and beg that you issue an order restraining and prohibiting S. H. Philpotts and all others from Cutting, hauling and removing any log timber of any kind from said swamp - also, moving any logs already cut and placed upon any high land to be moved — Respectfully

W. J. Jordan
S. F. Warrington
W. A. Harrell
F. L. Jones
Jeremiah Jones.
R. Williamson
A. D. Hardy
Thos. D. Jones
Jno. Cartwright
E. J. Driver
J. W. Darden
J. C. Wilson
R. L. Wilson

Virginia, Nansemond County, to-wit: in said State

I, E E. Holland, a Notary Public for the County aforesaid, do certify that E. J. Driver W. W. Jones, one of the complainants named in the foregoing bill, this day personally appeared before me in my said County, and made oath that the facts stated in the foregoing bill, are true to the best of his knowledge and belief.

Given under my hand this 24th, day of January, 1900.

E E Holland

.....

N P

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, IN VACATION, ON THE 25th DAY OF JANUARY, 1900.

W. T. Jordan et als.

vs.

Ann Keeling et als.

On motion of the complainants, an injunction is hereby awarded them in pursuance of the prayer in the foregoing bill, to enjoin, restrain and prohibit Ann Keeling, Joshua Ricks, Luther Philhower and .....: their employees, agents, attorneys and all others, from entering upon the said lands known as the "Cross Swamp" and cutting or removing any timber therefrom except for fire wood, and necessary farm timber, and also enjoin and prohibit the said Ann Keeling, Joshua Ricks, Luther Philhower and ..... their employees, agents and attorneys, from removing from the said premises any logs already cut thereon and placed upon any high land for the purpose of being hereafter removed until a further order of this Court; but before the complainants shall have the benefit of this injunction they or some one for them, shall enter into a bond in the penalty of $300.00 before the Clerk of this Court, with surety deemed sufficient by said Clerk, conditioned to pay all such costs as may be awarded against the parties obtaining this injunction, and all such damages as may be incurred in case this injunction shall be disolved.

Robert R. Prentis

To the Clerk of the
Circuit Court of
Nansemond County:

E E Holland 1v gg

W S Jordan 0v 0thers

W S Bell in Chancery

Ann Keeling 0v 0thers.

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT COURT OF NANSEMOND COUNTY.

W. T. Jordan and others, Plaintiffs.

vs.

Ann Keeling and others, Defendants.

The answer of Luther H. Philhower to an order of the Judge of the Circuit Court of Nansemond County to appear before Court and show cause, if any he can, why he should not be fined and attached for disobeying an order of the said Court entered on the 25th day of January, 1900, by entering upon the lands known as the "Cross Swamp" in the proceedings mentioned and cutting and removing the timber therefrom not fire wood or necessary farm timber.

Said respondent answers and says that is it true that he contracted to cut for E. L. Everett certain logs which were delivered by the said E . L. Everett to him and that said logs were taken from the Cross Swamp, but that it was expressly agreed that the lumber manufactured from said logs was to be used for necessary farm timber; that the said F. L. Everett agreed to pay him a stated price per thousand for cutting said logs; that said acts were done in good faith without any design, wish or expectation of disobeying the order of this Court, or of committing any contempt or offering any disrespect to said Court. And having fully answered said respondent prays to be dismissed with his reasonable cost by him in this cause expended and he will ever pray, etc.

Virginia,
To-wit:
Nansemond County.

This day personally appeared before me,_____ a Notary Public for the County and State aforesaid, the respondent, whose answer is above written, and made oath that the statements contained in said answer so far as made of his own

knowledge are true and so far as made from the knowledge or information derived from others he believes to be true.

Given under my hand this_____day of September, 1903.

_____

Notary Public.

Answer of Phillows
to Rule to show cause

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT COURT OF NANSEMOND COUNTY.

W. T. Jordan and others, Plaintiffs.

vs.

Ann Keeling and others, Defendants.

The answer of E. L. Everett to an order of the Judge of the Circuit Court of Nansemond County to appear before said Court and show cause, if any, why he should not be fined and attached for disobeying an order of the said Court entered on the 25th day of January, 1900, by entering upon the lands known as the "Cross Swamp" in the proceedings mentioned and cutting and removing the timber therefrom not fire wood or necessary farm wood.

Said respondent answers and says that it is true that he cut certain logs from said Cross Swamp, but that said logs were cut under the impression that he had the right to the same; that said logs have not been removed; that he proposed to use said logs for necessary farm timber; that he had no notice that any order of this Court had been entered relating to him; that it was done in good faith without any design, wish or expectation of committing any contempt or offering any disrespect to the Circuit Court of Nansemond County, but solely that he, the said respondent, might avail himself of what this respondent believed to be legal rights. And having fully answered said respondent prays to be dismissed with his reasonable cost by him in this cause expended and he will ever pray, etc.

VIRGINIA,

To-wit:

Nansemond County.

This day personally appeared before me,_____ a Notary Public for the County and State aforesaid, the respondent above written and made oath that the statements contained

in said answer so far as made of his own knowledge are true and so far as made from the knowledge or information derived from others he believes to be true.

Given under my hand this_____day of September, I903.

_____

Notary Public.

Answer of E. F. Everett to
Bill in Chancery

[illegible] Jordan [illegible] Thos

Vs. In Chancery

Ann Keeling et Thos

1909

July 16th

Final Decree

Elma A Thos

IN THE CIRCUIT COURT OF NANSEMOND COUNTY:

IN VACATION , ON THE 17th DAY OF AUGUST, 1903.

W. T. JORDAN AND OTHERS,

v.

ANN KEELING AND OTHERS.

By the consent of the parties, both plaintiffs and defendants, by their Attorneys, and on motion of the defendants, the hearing of the rule heretofore awarded against E. L. Everett and L. H. Philhower, court doth adjudge, order and decree that ~~this cause~~ be continued to 10 o'clock, Wednesday the 2nd day of September, 1903.

And it is further ordered that until further order of this court the said E. L. Everett and L. H. Philhower shall be enjoined and restrained from removing or otherwise disposing of any timber cut or removed on the property known as the "Cross Swamp."

Robert R. Prentis

TO THE CLERK OF THE CIRCUIT COURT OF NANSEMOND COUNTY:

W.T.JORDAN & OTHERS.

v.

ANN KEELING & OTHERS.

Enter 17th, Aug.1903.

Robt R Adams

Entered in Chancery Order
Book, No, 3 Page 527.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY,

IN VACATION ON THE 15th day of August, 1903.

W. T. JORDAN and Others,

v.

ANN KEELING and Others.

It being suggested to the court, upon the affidavits of E. J. Driver and W. N. Harrell, this day filed, that E. L. Everett and L. H. Philhower are disobeying a decree entered in this cause on the 25th day of January, 1900, by entering upon the lands known as the "Cross Swamp", in the bill and proceedings mentioned, and cutting and removing the timber therefrom, not fire-wood or necessary farm timber, on motion of the complainants by counsel, it is ordered that the said E. L. Everett and L. H. Philhower do appear before the Judge of this court at 10 o'clock A. M. on Monday the 17th day of August 1903, and show cause, if any they can, why they should not be fined and attached for disobeying said order entered as aforesaid. And it is further ordered that a copy of this order shall be forthwith served on the said E. L. Everett and L. H. Philhower by the Sheriff of this County. And it is further ordered that until further order of this court the said E. L. Everett and L. H. Philhower shall be enjoined and restrained from removing or otherwise disposing of any of the said timber cut and removed as aforesaid.

Robert R. Prentis

To the Clerk of the Circuit Court of Nansemond County:

Entered Aug. 15, 1903

Robert R. Reeves

Entered in Chancery
Order Book No 3
Page 526.

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

This is to certify that E. L. Everett has cut and is cutting and removing timber from the Cross Swamp land and hauling the same to Luther Philhower's mill and making sale of the same. I am interested in and am part owner of the Cross Swamp property.

W. H. Harrell

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

Sworn to and subscribed to before me by W. H. Harrell this 15th day of August, 1903.

S. E. Everett
Notary Public.

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

This is to certify that I have been informed that E. L. Everett has cut and is cutting and removing timber from the Cross Swamp land and hauling the same to Luther Philhower's mill and making sale of the same. I am interested in and am part owner of the Cross Swamp property.

E. J. Drivers

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

Sworn to and subscribed to before me by E. J. Drivers this 15th day of August, 1903.

S. E. Everett
Notary Public.

Affidavits that McEvoy
walking tractor

LAND GRANTS AND CAVEATS.

UNDER THE LAW in 1829 the first step necessary to obtain a patent or grant of waste or unappropriated land was a warrant from the Land Office. This was given upon the payment to the Treasurer of the Commonwealth the sum prescribed by law. A receipt was taken therefor and delivered to the Auditor, who gave the purchaser a certificate settihg forth the quantity of land for which application had been made. This certificate being lodged with the Register of the Land Office, he granted a warrant specifying the quantity of land; the rights of the applicant; and authorized any duly qualified surveyor to lay off and survey the same. The next step was the delivery of the warrant to the surveyor; the entry or location of the waste or unappropriated land for which the grant was sought. But there were certain lands which were not allowed by law to be located or entered for under the warrant. Among these were lands acquired by the Commonwealth on account of the non-payment of taxes thereon, unappropriated lands on the Bay of Chesapeake or the bed of any river or creek, which lands had remained unappropriated by the regal government and which had been used as a common to all the people; nor could an entry be made for any lands which had been settled thirty years prior to the date of the said entry and upon which taxes had been paid at any time within the said thirty years. In the event that any person objected to said grant being made he might enter a Caveat in the Land Office against the issuance of such grant expressing therein for what cause the grant should not issue, so also, if any person should obtain a survey of land to which another had a better right, the person having such better right might enter a caveat to prevent his obtaining a grant. The caveat setting forth the nature of the right on which the plaintiff claimed the land. A caveat under the Land Laws of Virginia was described to be a kind of equitable process in the nature of an injunction given to prevent a patent from issuing until it was determined by the proceedings on the caveat which

of the contending parties had the better right to the emanation of the patent. A copy of the caveat was delivered to the Clerk of the County in which the land lay and a summons was issued thereon requiring the defendant to appear on the Ist day of the next succeeding quarterly Court and defend his right. At the hearing of the cause the Court determined, with or with out a jury as it deem necessary, who was entitled to the land, and gave judgment accordingly If the judgment was in favor of the defendant a copy thereof being delivered into the Land Office vacated the Caveat. If the judgment was in favor of the plaintiff the delivery of a copy thereof together with a certificate and plat of the survey into the Land Office and upon the production of a legal ~~survey~~ certificate of the right of the plaintiff, he was entitled to a grant for said land.
See Loman's Digest 378 et seq. Second Minor's Institutes 988.

It seems that in this case that sometime prior to the year I829 Ezekiel Powell secured Treasurer warrant No. I0250 for the Cross Swamp; that on April 23rd, I829, a survey was made by virtue of said warrant and a report thereof made and filed in the Virginia Land Office. During the year I829 Jacob Keeling and a number of others sued out a Caveat claiming,
First, that the land was not waste and unappropriated, it having been held for time immemorial by the caveators as a common of farm timber and fire wood, under a deed or will, which they claimed was destroyed by fire during the Revolutionary War.
Second, because the land had been in the possession of said caveators and their ancestors for more that thirty years and that they had paid taxes thereon to the Commonwealth.
Third, because the caveators were in actual possession of the land.
Fourth, for technical irregularities in the survey.

A proper summons was issued and the case was removed to the Superior Court of Law and Chancery of Elizabeth City County, which was held in October, I835. Upon hearing it was determined

that the plaintiffs had established a right to this land and that they were entitled to a grant. The order of the Court does not state the reasons for its decision. That is, the record of the Court fails to show whether the plaintiffs' claim to the land was acquired by the deed or will, adverse possession, or by the payment of taxes thereon. The order of the Court merely being "(the Court) is of the opinion that the plaintiffs have the better right to the said lands therefore it is considered by the Court that the plaintiffs have a grant for the same upon their complying with the law in such case made". This order of the Court was certified to the Virginia Land Office and thereupon the Governor of Virginia on the I4th day of December, I835, issued a grant to Jacob Keeling, etc, This grant passed to the grantors the legal estate and seisin of the State, and, if not disposed of by deed or will, it now belongs to the heirs at law of the caveators hereinabove mentioned.

Commissioner's Office, Suffolk, Virginia

March 4, 1903.

To W. T. Jordan, S. F. Warrington, W. W. Harrell, F. L. Jones, Jeremiah Jones, R. Williamson, A. D. Darden, J. W. Jones, John Cartwright, E. J. Driver, Henry Kirn, J. W. Darden and Rebecca C. Wilroy,

COMPLAINANTS,

and

Ann Keeling, Joshuah Ricks and Luther Philhower, DEFENDANTS.

You are hereby notified that I have fixed upon the 18th day of March, 1903, if fair, if not , on the next fair day thereafter Sunday excepted, to take and settle at my office the following accounts;

FIRST. Who are the true owners of the tract of land mentioned in the bill.

SECOND. What interest they have in the said tract of land.

THIRD. Any other matter stated deemed pertinent by the Commissioner, or required to be stated by any party in interest.

Required to be taken by a decree of the Circuit Court of the County of Nansemond, rendered on the 25th day of October, 1901, in a suit in chancery depending in said court between you, at which time and place you are required to attend.

Given under my hand, as Commissioner in Chancery of the said Court, this the 4th day of March, in the year 1903.

Lest H. Causey Jr.

Commissioner in Chancery.

Know All Men by These Presents, That we, Elliott J Driver
John W Jones and Robert R Smith

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

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

Sealed with our seals, and dated this 25th day of January in the year of our Lord one thousand ~~eight~~ nine hundred and ..... , and in the 124th year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas an injunction is this day awarded against the defendants Ann Keeling Joshua Ricks and Luther Phelhower on a bill in Chancery filed in vacation in the Circuit Court of Nansemond County in the cause of W T Jordan and others against said Ann Keeling Joshua Ricks Luther Phelhower and their employees, agents, attorneys and all others from entering upon said lands known as the Cross swamps and cutting or removing any timber therefrom except for firewood and necessary farm timber and also enjoin and prohibit the said Ann Keeling Joshua Ricks Luther Phelhower and their employes agents and attorneys from removing from said premises any logs already cut thereon and placed upon any high land for the purpose of being hereafter removed until a further order of this Court; but before the Complainants shall have the benefit of this injunction they or some one for them shall enter into a bond in the penalty of $300. before the Clerk of this Court with surety deemed sufficient by said Clerk conditioned to pay all such costs as may be awarded against the parties obtaining this injunction and all such damages as may be incurred in case this injunction shall be dissolved.

E J Driver SEAL
John W Jones SEAL
R R Smith SEAL

In the office of the Clerk of the Circuit Court of Nansemond County, on the 25th day of January 1900 ~~190~~.

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

Teste: A E Gomer CLERK.

A Copy
Teste A E Gomer Clerk

Elliott J Driver

To { Injunction Bond

The Commonwealth.

1900

Jany 25th

Recorded in Official
Bond Book No 1 Page 196

A Copy

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Ann Keeling, Joshua Ricks and Luther Phichower

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the First Monday in February 1900, to answer a Bill in Chancery, exhibited against them in the said Court by W T Jordan S F Warrington W N Harrell P L Jones Jeremiah Jones R Williamson A J Darden J W Jones Jno Leatherwright E J Driver Henry Kirn J W Darden and Rebecca Wilroy

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this 25th day of January 1900, in the 124th year of the Commonwealth.

A copy—Teste:

_____, CLERK.

Teste:

A. P. Gomer, CLERK.

E E Holland ..... p. q.

W S Jordan
& others

vs. } In Chancery.

Ann Keeling
and others

1900

February ---- Rules.

First ---------- Monday.

Nansemond Circuit Court.

Process Book No. 2

Page 187

Executed this the 25th day of January 1900 by delivering a true copy of the within Summons to John Keeling and a true Copy of the Injunction attached thereto, and not finding Joshua Riddick at his usual place of abode I executed the within Summons by delivering a true Copy thereof to Laura Ann Riddick a female found there and over the age of sixteen years to gether with a copy of the injunction order attached and giving information thereof.

R E Nottingham
For J P Phillips Sheriff

In the Circuit Court of Nansemond County, In Vacation, on the 25th. day of January, 1900.

W. T. Jordan et als

vs

Ann Keeling et als.

On motion of the complainants, an injunction is hereby awarded them in pursuance of the prayer in the foregoing bill, to enjoin, restrain and prohibit Ann Keeling, Joshua Ricks, Luther Philhower and their employees, agents, attorneys and all others, from entering upon the said lands known as the "Cross Swamp" and cutting or removing any timber therefrom except for fire wood and necessary farm timber, and also enjoin and prohibit the said Ann Keeling, Joshua Ricks, Luther Philhower and their employees, agents and attorneys from removing from the said premises any logs already cut thereon and placed upon any high land for the purpose of being hereafter removed until a further order of this Court; but before the complainants shall have the benefit of this injunction they or some one for them, shall enter into a bond in the penalty of $300 X/X

before the Clerk of this Court, with surety deemed sufficient by said Clerk, conditioned to pay all such costs as may be awarded against the parties obtaining this injunction, and all such damages as may be incurred in case this injunction shall be dissolved.

Robert R. Prentis

To the Clerk of the
Circuit Court of
Nansemond County:
A Copy Teste: A P Gomey Clerk

I A P Gomey Clerk of the Circuit Court of Nansemond County do hereby certify that the bond required by the above order of injunction has been given with security deemed sufficient by me

Teste: A P Gomey Clerk.

To A. Bigger Clk & Circuit Court of Hanover
Mechanicsville, Virginia

W. T. Jordan S. T. Warrington W. R. Harrell
F. S. Jones, Jeremiah Jones, R. Williamson
A. Jordan, J. W. Jones, Jno. Carter & E. J.
Driver, Henry Winn, J. W. Jordan and Rebecca
Chiles,
Complainants,

vs

Ann Harding, Joshua Richardson Luther Phillips,
Defendants

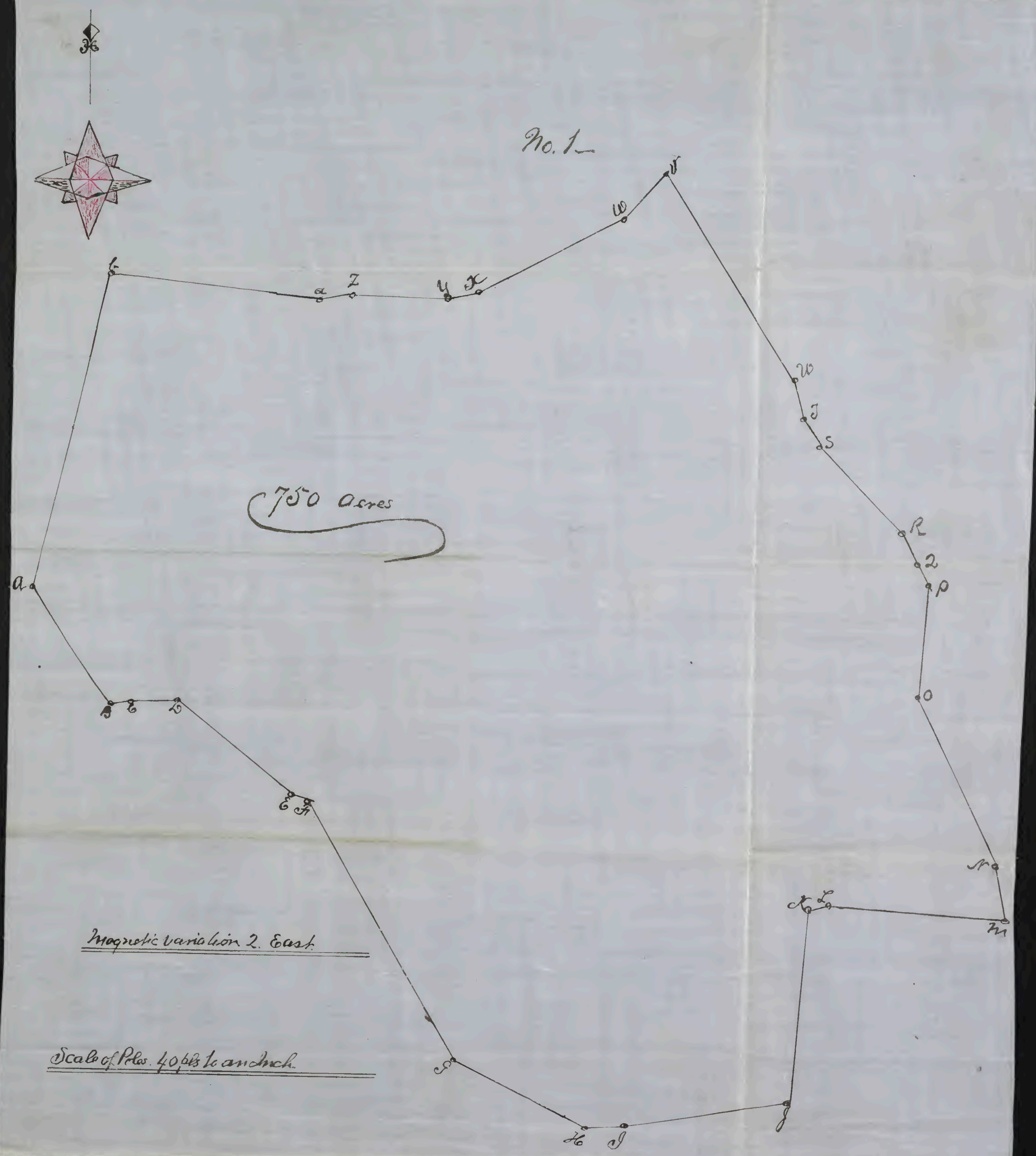
In Chancery

Please summons to Rules on 1st Monday in Feby, 1900

E. E. Holland p.q.

Fee $1.50

No. 1


750 Acres
Magnetic variation 2. East.
Scale of Plan. 40 lks to an inch.