

1909- 019  
Nansemond Co (Suffolk)

Chancery Causes: W.B. Ferguson & Co] vs H.O. Winborne & Co]

Hecht-Hirschler Co I, Gay, Cross, Holladay, Piland, Holland, Coluper,  
Lawrence, Holloman, Butler, Ballard, Reines, Beins

Folder 1 of 2

*with carbon copy*

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA, IN VACATION ,  
July 13th, 1905.

Walter B. Ferguson, trading as W. B. Ferguson & Company -----  
-----Complainant.

vs.

IN CHANCERY

John R. Winborne, Angie E. Winborne and H. O. Winborne-----  
-----Defendants.

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This cause, ~~which has been regularly submitted to the judge of this court for such decisions and decrees therein in vacation as might be made in term~~, came on this day to be heard on the bill and exhibits; the three several attachments ~~in equity~~ issued September 5th, 1902, November 4th, 1902, and June 24th, 1905; the petition of Hecht-Hirschler Company; the joint answers of the defendants, John R. Winborne, Angie E. Winborne and H. O. Winborne filed November 14th, 1902, with general replication thereto; the depositions of witnesses, and was argued by counsel.

On consideration whereof, the court is of opinion that the evidence is not sufficient to sustain the allegations of the bill that the defendants John R. Winborne and Angie E. Winborne were co-partners with H. O. Winborne doing business as H. O. Winborne or H. O. Winborne & Company at Buckhorn, Virginia, and doth adjudge, order and decree that the bill of complaint and the petition of Hecht-Hirschler Company be dismissed as to John R. Winborne and Angie E. Winborne, <sup>that</sup> and the attachments heretofore issued against the said defendants' property be quashed and that the said defendants John R. <sup>Winborne</sup> and Angie E. Winborne recover of the complainants their <sup>in this behalf expended</sup> costs. And the case as to them is ordered <sup>to be</sup> stricken from the docket.

At the instance of complainant, who desires to present a petition to the Supreme Court of Appeals of Virginia, reviewing this decree, it is ordered that the execution of the same be

suspended for the period of ninety days, when the said complainant~~s~~ shall give bond before the clerk of the said court in the penalty of \$250.00, with a condition reciting this decree and the intention of said complainant to present such petition, and providing for the payment of all such damages as may accrue to any person by reason of the said suspension, in case a supersedeas to ~~such~~ *this* decree should not be allowed, and be effectual within the time so specified.

To the Clerk of the Circuit  
Court of Nansemond County.

Removal order

W. B. Ferguson, etc.,

v.

--DECREE--

Angie E. Winborne et als.

-----  
Enter 13th. day of July

1905.

Robert R. Huntis

Entered in  
Chancery Order  
Book No 3 Page  
673.

In the Circuit Court of Nansemond County in the Chancery Cause of W. B. Ferguson, trading and doing business as W. B. Ferguson & Company, v. Angie E. Winborne, H. O. Winborne and J. R. Winborne, merchants and partners doing business as H. O. Winborne & Company.

=====

Your petitioner H. O. Winborne & Company trading and doing business as a corporation, respectfully represents, that there was instituted in the Circuit Court of Nansemond County, on the chancery side thereof, a certain suit, the title of which is the title above herein described, on September 5th., 1902, the object of which suit was to establish a debt due W. B. Ferguson & Company by H. O. Winborne & Company, and to declare the property of the said defendants as liable therefor, including certain real estate in the county of Nansemond owned by Angie E. Winborne as set forth in complainants bill.

Your petitioner also respectfully represents that they are creditors of the said defendants, who owe them the sum of Two hundred and fourteen & 50/100 dollars (\$214<sup>50</sup>), with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 1902, which indebtedness is evidenced by open account, and that no part of same has been paid, but that all of same is still due to them.

Your petitioner joins in the statements and allegations as set forth in the complainants bill, and petitions this Honorable Court that they be allowed to come in as plaintiffs in this cause; that their claims may be ascertained and their debt given the force and effect of a judgment against the defendants; that the property of the said defendants may be subjected to the payment thereof; that the said Angie E. Winborne, H. O. Winborne and J. R. Winborne

may be declared jointly liable to your petitioner for the amount due to them, and that all such inquiries may be directed, accounts taken, and such other, further, general and special relief may be granted to your petitioner as the nature of this case may require or to equity shall seem meet. And your petitioner will ever pray, &c.

*Hecht - Broschler Company*  
*by E. E. Hall and J. A. Att.*

STATE OF VIRGINIA,  
CITY OF NORFOLK,

To-wit:

This day personally appeared before me, \_\_\_\_\_  
\_\_\_\_\_ a Notary Public for the City aforesaid, in the State of Virginia, \_\_\_\_\_  
of the firm of \_\_\_\_\_, and made oath that the statements contained in the foregoing petition are true in so far as made from his own knowledge, and in so far as made from information derived from others he believes them to be true.

Given under my hand this \_\_\_\_\_ day of January, 1905.

\_\_\_\_\_  
Notary Public.

Depositions of W. B. Ferguson and others taken before me, Julia A. Brinkley, a Notary Public for the County of Nansemond, Virginia, (notice of time and place of taking same being expressly waived by counsel for plaintiff and defendants) on the 7th. day of October, 1904, the 20th. day of October, 1904, and on the 22nd. day of October, 1904, to be read as evidence on behalf of W. B. Ferguson & Co. in a certain suit in equity pending in the Circuit Court of the County of Nansemond, wherein W. B. Ferguson, trading as W. B. Ferguson & Co., is plaintiff, and J. R. Winborne, A. E. Winborne and H. C. Winborne are defendants.

PRESENT: James L. McLeMore, Counsel for Plaintiff-  
Robert W. Withers, Counsel for Defendants-

Signatures of witnesses all waived.

W. B. Ferguson, being duly sworn, deposes and says, as follows:

DIRECT EXAMINATION BY MR. MOLEMORE:

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

Answer- W. B. Ferguson, 44, Suffolk, I know the parties to this suit, and am plaintiff in this cause.

Q.2 Please state the circumstances under which you sold goods to the Buckhorn firm of Winbornes, and who constituted that firm, if you know?

A. On or about January 2nd. 1902, John R. Winborne and H. O. Winborne came in my office and made a purchase of goods to be shipped to Buckhorn, Va. A short conference was held between John R. Winborne, H. O. Winborne and myself, in the sample room adjoining my office, regarding the account for the Buckhorn store. They stated that H. O. Winborne & Co. had decided to open a store at Buckhorn, Va. They wanted to know if the account could be kept so that the store at Tunis and Buckhorn could show the separate transactions. I told them that I would make an effort to keep the bills in that shape. Perhaps other remarks were made not pertinent to the business, and I then introduced them to Mr. W. S. Cross, one of my salesmen, who took the order. This order was shipped, and I am under the impression that the bill was made and shipped to H. O. Winborne at Buckhorn, Va, as a matter of convenience and to distinguish the shipments to that store, at the request of J. R. & H. O. Winborne who called to make the purchase for the Buckhorn store. This covers the circumstances surrounding the first purchase.

Q.3 Had they, or ~~either~~ either of them, been running a store anywhere else prior to this time?

A. The same firm composed of A. E. Winborne, John R. Winborne and H. O. Winborne, were customers of ours prior to the sale of this bill

and shipments had been made to this firm at Tunis, N. C.

Q.4 How do you know that these three persons named constituted the firm at Tunis?

A. Prior to the shipment to the Buckhorn store we had sold to the firm of A. E. Winborne, or perhaps it was A. E. Winborne & Co., at Tunis, N. C.. Subsequently this firm at Tunis, N. C. sent us an order signed "H. O. Winborne & Co." Believing possibly it was the same firm under a new name, with perhaps new blood, I took the precaution to write and ask them for the individual members' names, and stated that we had never had the pleasure of selling them, and also requested them to give us information regarding their individual worth. This was in reply to an order that came as H. O. Winborne & Co. In connection with this request for information I also asked for some information about certain items in the order, and requested a reply covering both points, upon receipt of which we would be glad to give the matter further attention. In response to that request they wrote a card stating that we were the first to ask such questions, and to please hold the order until they could make such a statement as we required. I took it that they desired to give the information, and a short while after this card was written, Mr. John E. Winborne paid me a visit and stated that the members of the new firm were A. E. Winborne, John E. Winborne and H. O. Winborne.

Q.5 Have you the card that he wrote you in reply to your letter?

A. Yes. I herewith file same marked "H. O. W."

Q.6 Have you a copy of the letter which you wrote H. O. Winborne & Co. that brought forth this postal card?

A. Yes. It is dated April 4th., 1901. I hand you herewith the original tissue and a copy of same transcribed for easy reading.

(Copy filed marked "H.O.W. 2" )

Q.7 Witness is here handed a postal card dated September 13th., 1901, signed H. O. Winborne & Co. and filed herewith as exhibit "H.O.W." and asked if he knows who wrote it.

A. Of my own knowledge I do not. It corresponds to the handwriting that we have previously had from the firm of H. O. Winborne & Co., and my understanding from the firm was that John R. Winborne conducted the correspondence.

Q.8 Did you have any further conversation or correspondence with John R. Winborne, H. O. Winborne or A. E. Winborne respecting the Buckhorn business?

A. Prior to the interview which took place at the time the first bill was purchased, no. Subsequent to the first purchase Mr. John R. Winborne called on several occasions to leave a small order for the Buckhorn store, and on one occasion stopped in and asked if we had received an order from the Buckhorn store, and if so to please hurry same forward.

Q.9 Where did the order for the Buckhorn store come from?

A. The goods were purchased by John R. Winborne as a buyer. Mr. H. O. Winborne was present at the time the purchase was made.

Q.10 Witness is here shown note for \$366.05, dated July 7th., 1902, signed H. O. Winborne & Co. and payable to W. B. Ferguson & Co. thirty days after date, and asked what this note represents and who executed it.

A. This note, to the best of my knowledge and belief, without reference to the books, embraces the renewal of a previous note and possibly takes in a part of the open account. The note was signed in my presence by H. O. Winborne.

Q.11 What is the remainder, if any, due you by H. O. Winborne & Co?

A. The statement rendered by our book-keeper, and herewith filed as "H.O.W. No.4" shows June 20th. To Mdse. \$13.90, July 8th., \$20.88, and July 1st., interest on note \$2.75. The two first items are for merchandise. The statement also shows the amount of the note which has already been filed, making a total of \$411.58, which amount is still due and unpaid.

Q.12 Who signed the note?

A. H. O. Winborne.

Q.13 It is stated by H. O. Winborne in his testimony previously given in this case that the note was signed "H. O. Winborne & Co." at your suggestion, and to pay a bill due by H. O. Winborne, because, as he states, you said to him that the bank would not take it unless it was so signed. What is your recollection with respect to the execution of this note?

A. The note given previous to this was not clearly signed "H. O. Winborne & Co." I called his attention to the fact that the signature was not perfect, and to please write the note clear.

Q.14 To whom did you give credit when you sold these goods to go to Buckhorn, and why?

A. At the request of John R. Winborne who has handled principally the business of the firm of A. E. Winborne & Co. and H. O. Winborne & Co., the credit was extended to the same firm. No reference was made to any change whatever, and the request to keep the bills separate was nothing more than we have done for other firms, and are doing today, in order that the separate stores may show the various shipments that go to them. So far as my knowledge at this time, or any other time, goes, the firm

of H. O. Winborne & Co. composed of Mrs. A. E. Winborne, John R. Winborne and H. O. Winborne, composed the firm both at Tunis and Buckhorn, and were known to us as one and the same.

Q.15 Who represented Mrs. A. E. Winborne in all the transactions which she had with your company?

A. John R. Winborne was the business manager. We had a visit from Mrs. A. E. Winborne on one or two occasions. I think on one occasion she paid some money, and on another occasion she left a small order.

Q.16 Would you have sold goods to the Purvis store, giving credit to H. O. Winborne alone?

A. No, not unless some substantial basis for credit could have been shown.

Q.17 What basis of credit was shown that made you sell to this store?

A. In our original transactions with the firm of A. E. Winborne, I think it was, or perhaps A. E. Winborne & Co., we located the property that was owned by Mrs. A. E. Winborne in this State near Holland, Va. Credit was extended principally upon this basis.

Q.18 When John R. and H. O. Winborne came to your store on the occasion of the purchase of the first bill of goods that went to Buckhorn, was there anything said about who constituted the firm which was buying these goods?

A. No reference was made to the firm except that they asked to have the bills kept separate in order that they might tell how the Buckhorn store was getting on. I treated the account as H. O. Winborne & Co., and never dreamed that a new firm had been formed. Certainly no intimation of that nature was made at any time, and the

account, so far as we know, up to this time, was that of H. O. Winborne & Co.

Q. 19 Has Mrs. A. E. Winborne, personally or through any indirect ways or means, ever intimated to you, or your company the fact that she had withdrawn from the business, or was no longer to be held responsible for the debts of the partnership?

A. No, not directly or indirectly did we ever receive any such information, nor have we ever seen or heard of any dissolution.

Q. 20 Mr. John R. Winborne is his testimony states in reply to the question "Did you buy any goods for the Buckhorn house?, No. sir." And says further that his son, Holley, (H. O. Winborne) made arrangements with W. S. Cross for the credit bill of this Buckhorn business. What have you to say to this statement.

A. Mr. John R. Winborne made the purchase, to the best of my knowledge and belief, and as far as I was able to know, for the firm of H. O. Winborne & Co. Mr. W. S. Cross took the order, but made no arrangements for any credit.

Q. 21 Mr. John R. Winborne also states that he stopped in at your place on one occasion after the Buckhorn business was in operation to pay you a small bill, and when informed of the amount he advised you that there was some error in it, and that you looked over the books with the assistance of your ~~xxxx~~ clerks and found out that "they had put Holley's account with mine", and that you said this was wrong, and it was one of Holley's accounts, and that you then changed it and put it to H. O. Winborne, and he paid his account in full. He also says at the same time that he told you he was not interested in H. O. Winborne at Buckhorn, and that H. O. Winborne & Co. at Tunis was entirely different from the Buckhorn business. What would you say with reference to these statements?

A. As Mr. Winborne fails to give the date of the visit, and am therefore unable to refer to the records in order that a definite reply can be made. So far as the accounts being mixed, it would not be an unusual thing because we were treating the account as one and the same, endeavoring to accommodate, as far as we could to keep the accounts for their convenience separate. So far as a notice of their being two firms, I have no recollection, and can state positively that no such statement was ever made to me by John R. Winborne, or any member of the firm of H. O. Winborne & Co.

Q.22 Have you in your possession any written evidence showing or tending to show any connection between the Tunis and the Buckhorn business, and if so state what?

A. Here is a letter dated at Tunis, N. C. January 4th., 1902, in the handwriting of John R. Winborne, and was addressed to Holley. The contents will in my judgment show that the accounts were one and the same.

--Said letter is filed marked exhibit "H.O.W.No.5".--

Q.23 How came this to be in your possession?

A. This letter came with the stock and other effects from the store at Buckhorn, Va., and was found among the invoices when the inventory was being appraised. I was assisting Mr. Cross in getting the stock of goods appraised.

CROSS EXAMINATION BY MR. R. W. WITHERSE

Q.<sup>24</sup> I understand that the only way in which you can connect A. E. Winborne with H. O. Winborne at Buckhorn is through a statement made by J. R. Winborne in person. Is this correct?

A. The firm of H. O. Winborne & Co. were represented to me in nearly all of the transactions in the person of J. R. Winborne. As stated before, Mrs. Winborne paid us <sup>possibly</sup> one or two visits. Mr. J. R. Winborne was the business man of the firm.

Q.<sup>25</sup> For whom and when did A. E. Winborne pay you money and order goods?

A. I cannot say positively whether it was for H. O. Winborne & Co. or for A. E. Winborne or A. E. Winborne & Co.

Q.<sup>26</sup> Do I understand that you as plaintiff assert that A. E. Winborne and J. R. Winborne were in fact partners of H. O. Winborne at Buckhorn?

A. So far as H. O. Winborne & Co. is concerned, I knew no difference between that store and the store at Tunis, nor were we informed that there was any difference in the firm. The accommodation asked for in keeping the bill separate was the same that had been asked in many instances before where the same firm were operating two stores. As such I understand that these two stores were being operated by one and the same firm.

Q.<sup>27</sup> The licenses exhibited in the testimony clearly show that H. O. Winborne at Buckhorn had no partners in fact. Are these licenses correct or not?

A. I had no information regarding the licences. I cannot say it is a fact of my own knowledge.

Q.<sup>28</sup> Then you do not assert that J. R. and A. E. Winborne were in fact partners, that is to say, had put money in the business, and expected returns or profits therefrom?

x A. I can say that so far as my own knowledge is concerned I cannot say who put the money in this concern.

Q.<sup>29</sup> If Mr. H. O. Winborne, Mr. J. R. Winborne and Mrs. A. E. Winborne all testified in oath that J. R. Winborne and A. E. Winborne had in fact never put a dime in the business, and were not in fact partners, with H. O. Winborne, can you deny or affirm their statement?

A. Of my own knowledge, I cannot. They did not state at the time of the purchase for the Buckhorn store that there was any difference in the firm at that time, or that they expected to make any between it and the firm at Tunis, N. C.

Q.<sup>30</sup> Then your claim that Mrs. A. E. Winborne and J. R. Winborne are responsible for the debt contracted by H. O. Winborne at Buckhorn rests upon the ground that you understood that the members of the firm of H. O. Winborne & Co. at Tunis were the same as H. O. Winborne or H. O. Winborne & Co. at Buckhorn. That is correct is it not?

A. We did not extend credit to H. O. Winborne, it was extended to the firm of H. O. Winborne & Co. composed of H. O., J. R. and A. E. Winborne.

Q.<sup>31</sup> Have you not repeatedly stated that on the occasion of the purchase of the first goods shipped to Buckhorn that no credit was asked for directly to you by either J. R. Winborne or H. O. Winborne?

A. When the first purchase for the Buckhorn store was made, it was made by H. O. Winborne & Co., represented by J. R. Winborne.

Q.<sup>32</sup> Please state the conversation at the time of the first visit of H. O. Winborne to purchase goods for the Buckhorn store?

A. The only recollection I have is contained in answer to question No. 2

Q.<sup>43</sup> Then you do not undertake to give to the Court the language employed by the parties at that time, but you give your interpretation of the language. Can you not repeat just what Mr. Winborne said at that time?

A. The best recollection I have of what took place, except possibly the reference to the goods themselves, has been given in answer No. 2.

Q.<sup>44</sup> Did not these gentlemen converse with Mr. Cross before they saw you?

A. I don't know. Mr. Cross certainly had no conversation with them regarding credit. I do know that they were turned over to Mr. Cross to take the order for the goods.

Q.<sup>45</sup> Has Mrs. A. E. Winborne in person ever held herself out to you as a partner of H. O. Winborne & Co?

A. In her visits referred to in this testimony, she did.

Q.<sup>46</sup> You stated that these visits were probably made when Mrs. A. E. Winborne was in business in her own name, that is, in 1900. Do you wish to change that testimony?

A. The testimony as given does not state that as a fact. It states that her visits were made possibly while the firm was A. E. Winborne or A. E. Winborne & Co. I do not care to change the testimony already given.

Q.<sup>47</sup> If her visits were made when the business was A. E. Winborne or A. E. Winborne & Co., explain how this is a holding out as to the business of H. O. Winborne & Co.

A. J. R. Winborne in person made a statement for the purpose of obtaining credit, that the firm of H. O. Winborne & Co. when changed from A. E. Winborne or A. E. Winborne & Co. was composed of Mrs. A. E. Winborne Mr. John R. Winborne and H. O. Winborne. This is the only statement that we have ever had regarding the firm of H. O. Winborne & Co.

Q. Is it not true that the goods were shipped to H. O. Winborne, Buckhorn, Va., and that you were requested to keep the accounts separate from H. O. Winborne & Co. at Tunns, N. C.?

A. It is true that they requested us to keep the two accounts separate as a matter of convenience. It is not true that all of the goods were so billed and shipped.

Further this deponent saith not.

COPY

TESTIMONY OF JOHN L. GAY, who being duly sworn deposes and says

DIRECT EXAMINATION BY MR. MCLEMORE:

Q.1 Please state your name, age, residence, and do you know the parties to this suit?

A. John L. Gay, 45, reside in Suffolk. I know the parties to this suit.

Q.2 Are you in anyway interested in the results of this suit?

A. Not at all.

Q.3 Where were you operating in 1901.

A. I was operating at Tunis, N. C.

Q.4 Were the defendants in this case living at Tunis at that time?

A. They were.

Q.5 What were they doing?

A. Running a kind of store or commissary for me. They furnished my hands at the mill. I was running or operating a saw mill at Tunis at that time.

Q.6 What was the firm name of the parties who ran the commissary and store above referred to?

A. They had two different names there while at the place. J. R. Winborne & Co. and A. E. Winborne & Co., I think, as well as I remember.

Q.7 Do you remember who constituted the firm when operating as A. E. Winborne & Co., or A. E. Winborne, and who constituted the firm when operating as J. R. Winborne & Co?

A. I will explain it to you. When they first started there it was run as J. R. Winborne & Co., and ~~xxxx~~ Mr. and Mrs. Winborne was the partners. They constituted the firm. And then after a while they changed the name to A. E. Winborne & Co., and the young man, H. O. Winborne, come down to Tunis from Buckhorn, or near Buckhorn, and took an interest

in the business, as I understood it and as they told me that he was a partner.

Q.8 When did H. O. Winborne leave there and open store at Buckhorn, as near as you remember?

A. Sometime in the Fall of 1902, as well as I ~~remember~~ remember. I made a mistake, it was 1901 that he left Tunis and went in business at Buckhorn.

Q.9 How do you know it was 1901 instead of 1902?

A. Because I shut my mill down and stopped running or operating at Tunis December 1901, and of course he left before I did. When I first mentioned 1902, one year had just slipped my memory.

Q.10 Do you know who composed the firm operating at Tunis immediately prior to and at the time you shut your mill down there?

A. Well, as I understood from Mr. Winborne and his wife, that he, J. R. Winborne, A. E. Winborne and H. O. Winborne was the partners, or the name of the partners in the business.

Q.11 Do you know who constituted the firm or owned the business at Buckhorn which was opened by H. O. Winborne at or about the time he left Tunis?

A. I only know what J. R. Winborne and A. E. Winborne told me; and they said that they and H. O. Winborne had opened a business or started a business at Buckhorn. After they stopped selling goods at my place I gave them a note for some money, and that note was lost in the mail, and they wanted me to make the note good by paying them the money. This I would not do until they indemnified me for so doing, and this is the time that A. E. Winborne stopped me in the road in front of their store and told me

that they needed the money, and had to have it as they were running a business at Buckhorn and they needed the money to pay bills. When we had a trial as to whether I should pay the money or not without an indemnifying bond, J. R. Winborne made a statement in Court that J. R. Winborne and A. E. Winborne and H. O. Winborne was a-running a business at Buckhorn, and ~~the~~ the firm was worth from \$2000.00 to \$2500.00 and they were responsible for their debts, and if the note ever turned up they would make it good, and upon his (J. R. Winborne's) statement the Justice of the Peace compelled me to pay the note and only take J. R. Winborne's bond for my security. And then is when he stated that he and his wife, or A. E. Winborne, and H. O. Winborne were running the business at Buckhorn.

Q.12 Who actually attended to the store which was operated in Tunis during the latter part of 1901?

A. Why, J. R. Winborne and A. E. Winborne.

+ Q.13 Did Mrs. A. E. Winborne stay in the store herself while the same was being run under the name of J. R. Winborne & Co.?

A. Yes sir.

Q.14 Did Mrs. Winborne make any statement to you as to who were the partners in the presence of her husband, or was she alone?

A. Which company do you mean, or which firm do you mean?

Q.15 I refer to the partnership at Buckhorn?

A. J. R. Winborne was standing in the store and she was in the porch, or just out of the porch on the ground, when she said that they were all running a store or business at Buckhorn, and needed the money to pay bills.

Q.16 Do I understand from your testimony that Mrs. Winborne personally was trying to collect the debt which they claimed that you owed them, at this time, for the firm at Tunis?

A. She asked me for the money and insisted on my paying of it, and really had more to say about it than J. R. Winborne.

Q.<sup>17</sup> Did Mrs. A. E. Winborne give any reason why she wanted this bill which you owed them at this particular time, and if so, what?

A. She said they were buying a good many goods to run their business at Tunis and Buckhorn, and she wanted the money in order to meet her payments.

CROSS EXAMINATION BY MR. WITHERS:

Q.<sup>18</sup> To whom ~~which~~ was your note which was lost payable?

A. H. O. Winborne & Co.

Q.<sup>19</sup> During what time was it contracted?

A. Sometime in the Summer or Fall of 1901.

Q.<sup>20</sup> I understood your testimony to state that the business was run as A. E. Winborne & Co. up to the Fall of 1901. Is that correct?

A. I did not so intend to state it. I stated this: as well as I remember it was J. R. Winborne at first, A. E. Winborne second and H. O. Winborne & Co. third, and H. O. Winborne & Co. were running the business the latter part of 1901, but what time it stopped that name I don't remember. They changed so much there that I could not keep up with it.

Q.<sup>21</sup> Do you remember the date of the trial when you were sued by H. O. Winborne & Co?

A. I do not, but it was sometime, as well as I remember, the first of 1902. I cannot say positively about that, I don't remember.

Q.<sup>22</sup> I understood you to say that at that trial J. R. Winborne said

that the firm H. O. Winborne & Co. was composed of A. E. Winborne, J. R. Winborne and H. O. Winborne.

Q.<sup>23</sup> Were either A. E. Winborne or H. O. Winborne present at that time?

A. They were not.

Q.<sup>24</sup> Was the indemnifying bond given you J. R. Winborne's or H. O. Winborne & Company's?

A. As well as I remember, it was H. O. Winborne & Co., as Mr. J. R. Winborne had just stated that H. O. Winborne & Co. was worth between \$2000.00 and \$2500.00, the Justice decided that their name or bond was sufficient after he made this statement. This is the best of my recollection.

Q.<sup>25</sup> You were being sued by H. O. Winborne & Co. at Tunis on a lost note?

A. Yes sir.

Q.<sup>26</sup> And the Justice gave judgment against you, and required H. O. Winborne & Co. at Tunis to put up an indemnifying bond. Is that correct?

A. As well as I remember now that H. O. Winborne & Co. put the bond up.

Q.<sup>27</sup> Was it not to the interest of J. R. Winborne to state that the firm of H. O. Winborne & Co. at Tunis owned valuable property or assets?

--Objected to by plaintiff's counsel because it is calling for an opinion from the witness based upon no knowledge which he could have on the subject--

A. I suppose it was, but not enough to lie about on his oath.

Q.<sup>28</sup> Please state what A. E. Winborne told you about her being a partner in the business at Luckhorn, if anything.

A. As I have before stated, when she asked me for the money I know she said that they were running a business, or H. O. Winborne & Co. was running a business at Luckhorn, and they needed the money to pay the bills.

Q.<sup>29</sup> Did she or did H. O. Winborne & Co., or H. O. Winborne say they were running a business at Luckhorn?

A. As well as I remember, she said H. O. Winborne & Co., because she was after this money that I owed to H. O. Winborne & Co., and she positively stated that she wanted the money to pay their bills, as they were buying goods for Tunis and Luckhorn and needed the money.

Q.<sup>30</sup> When Mrs. Winborne saw you it was before this suit, was it not. I mean the suit against you?

A. It was.

Q.<sup>31</sup> It was before you left Tunis, was it not?

A. It was not.

Q.<sup>32</sup> Please fix the date as best you can.

A. I cannot exactly give you the date, as the note was a time note and after the note was due it was quite a while before this case was settled in court, and therefore I cannot give you the exact date when it was.

Q.<sup>33</sup> When was the note due?

A. I don't exactly remember, but I think sometime before Christmas, 1901.

Q.<sup>34</sup> How long before H. O. Winborne & Co. warranted you was it that you and Mrs. A. E. Winborne had the conversation referred to by you?

A. A month or more, I believe.

Q<sup>35</sup> You do know that it was before any threats<sup>of suit</sup> were made, do you not?

A. I don't remember.

Q<sup>36</sup> Do you not remember that it was before Christmas?

A. I cannot exactly say, but I rather think it was soon after Christmas, though I am not sure.

Q<sup>37</sup> After this time you were sued by H. O. Winborne & Co. at Tunis and judgment obtained against you. Please state if you have very kindly feelings for these people?

A. I have, and I have seen Mr. Winborne lately and got him to do favors for me, and I do the like for him.

REDIRECT EXAMINATION BY MR. MCLEMORE:

Q<sup>38</sup> Did either Mr. Winborne or Mrs. Winborne in their conversation with you with reference to the Buckhorn business, say how much they had bought for this store, or indicate anything about the size of the transactions at this point?

A. Nothing except what J. R. Winborne said in the trial of the case. He stated that they were doing a good business at Buckhorn and had just bought a large bill of goods, and were able to pay their debts, and that if they put up an indemnifying bond they were responsible for it. And Mrs. Winborne told me that they were doing a business over there, and needed this money to pay their bills, but did not say how many bills.

Further this deponent saith not.

Testimony of W. S. Cross, who being duly sworn deposes and says.

DIRECT EXAMINATION BY MR. McLEMORE:

Q.<sup>1</sup> Please state your name, age, residence and do you know the parties to this suit?

A. W. S. Cross, 30, reside in Suffolk, and know the parties to this suit?

Q.<sup>2</sup> Are you in anyway interested with either plaintiff or defendant or in the results of this controversy?

A. I am not.

Q.<sup>3</sup> It has been testified here by one or two of the defendants that J. R. Winborne and H. O. Winborne about the time a business was opened at Hickhorn by the Winbornes, came to Suffolk and went to W. B. Ferguson & Co.'s, in which place you were at that time a salesman, and that they saw you and arranged terms of credit and bought a bill of goods from you at that time. Please state your recollection of this transaction.

A.<sup>4</sup> Now, I cannot say positively whether I waited on these people or not the first time. So far as arranging credit, or terms of credit. I did not.

Q.<sup>5</sup> Did they take up the question of terms of credit with you at all?

A. I don't think they did. I cannot say positively.

Q.<sup>6</sup> Can you say positively that you did not arrange with them as to the terms of credit?

A. I can.

Q.<sup>7</sup> Was this any part of your business?

A. It was not, where people were buying their first bills at the house.

Q.8 Who has the control of the credit department or fixes the terms upon which goods are sold?

A. W. B. Ferguson.

Q.9 Who was present when this bill of goods was bought to go to Buckhorn?

A. I do not remember selling the first bill. I don't know whether I sold the first bill or not. It seems to me it was the old man and his son I waited on ~~the first time~~ but I don't know whether it was the first time or not.

Q.10 At the time you waited on J. R. Winborne and H. O. Winborne (that is, the old man and his son), please state the circumstances as you remember them.

A. As I remember they were in the ~~farm~~ office when I came in, I think, from one of my trips. Mr. Ferguson called me in the office and asked me to wait on them. I think that is the way, I cannot say positively.

Q.11 And you sold them what they desired to buy without mentioning terms of credit?

A. I did?

Q.12 If H. O. Winborne had come in to the store and said, Mr. Cross I wish fifty or one hundred dollars worth of goods shipped to me at what Buckhorn, would you have done?

A. I would have taken the order and taken it to Mr. Ferguson.

Q.13 Did you, after taking the order at the time you remember waiting on J. R. and H. O. Winborne, carry it to Mr. W. B. Ferguson?

A. I think I did, as that was the rule in accepting orders for the house.

Further this deponent saith not.

TESTIMONY OF F. A. HOLLADAY, who, being duly sworn, deposes and says

DIRECT EXAMINATION BY Mr. McLEMORE:

Q.1 Please state your name, age and residence?

A. F. A. Holladay, 32, Suffolk, Va.

Q.2 This is a case of W. B. Ferguson v. J. R. Winborne, A. E. Winborne and H. O. Winborne. Do you know the parties to this suit?

A. I only know H. O. Winborne and W. B. Ferguson.

Q.3 Tell what, if any, conversation you ever had with H. O. Winborne with reference to his mercantile interests?

A. I had been selling H. O. Winborne & Co. at Tunis, N. C., and H. O. Winborne came in my store in Suffolk and asked for a bill of goods to be shipped to him at Buckhorn, Va. I asked if it was the same concern as H. O. Winborne & Co. at Tunis, and he said I am H. O. Winborne of Tunis, and I want this shipped to the same concern at Buckhorn, and as I had already been informed that H. O. Winborne & Co. at Tunis were all right, I did not hesitate to send his order to Buckhorn. That is all I knew until I got a Bankrupt notice.

Q.4 Did you make any different account on your books for the Tunis and Buckhorn firm?

A. No, I charged to the same concern.

CROSS EXAMINATION BY MR. WITHERS:

Q.5 You have repeated the statement made by Mr. Winborne and not your interpretation of his statement in your answer. Is this correct?

A. That is what he said.

Q.6 What did he say?

A. It has been a year and a half ago since he made that statement to me, and it is hard to tell now exactly word for word as he said it,

but I know well he said he was H. O. Winborne of H. O. Winborne & Co. at Tunis, and I asked him if he was the old man, and he said , No, I am the young man, H. O. Winborne.

REDIRECT EXAMINATION BY MR. McLEMORE:

Q.7 Do you remember the date?

A. No, but I can tell you from my books.

Q.8 Can you tell about when this conversation occurred?

A. I can tell you by looking at my books. It was about the time a few days or a week after he had opened the store at Buckhorn, I think.

COPY  
Further this deponent saith not.

The following are agreed as a portion of the facts to be read in the Chancery Cause of W. B. Ferguson & Company v. H. O. Winborne & Company pending in the Circuit Court of Nansemond County, and which has been appealed from a decree of said court to the Supreme Court of Appeals of Virginia:

FIRST- That the mercantile business conducted at Buckhorn, or Purvis, was in the name of H. O. Winborne, and that shipments to this point, with a few exceptions, were consigned to H. O. Winborne, and the people living in the vicinity and dealing at the store, dealt with H. O. Winborne and knew no other parties in connection with the business; that the mail came, with a few exceptions, directed to H. O. Winborne, and that neither John R. Winborne or Angie E. Winborne were known to the customers dealing at the store as connected with the said business. These facts were testified to by ten witnesses.

SECOND- That the licenses to do business were issued in the name of H. O. Winborne; that the business at this place was conducted about seven months up to the 23rd. day of July, 1902, at which time the said H. O. Winborne filed his voluntary petition in bankruptcy.

THIRD- That Buckhorn, or Purvis, is a railroad station on the Seaboard Air Line Railway, at which point there are three or four families living, and two stores.

FIFTH- That H. O. Winborne is insolvent, and a judgment against him is worth nothing at this time.

SIXTH- That all the notes given to W. B. Ferguson & Co. for the debt due at the Buckhorn store were signed "H. O. Winborne" except the last note, which was signed "H. O. Winborne & Co," *which was a renewal of former notes signed "H. O. Winborne".*

The following is so much of the record in the cause of W. B. Ferguson & Co. v. H. O. Winborne & Co. as counsel for plaintiffs and defendants think will enable the appellate court properly to decide the case.

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

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Your orator, W. B. Ferguson, trading and doing business  
as W. H. Ferguson & Company, respectfully represents to the  
court the following case:

That Angie E. Winborne, H. O. Winborne and J. R. Win-  
borne, merchants and partners doing business as H. O. Winborne  
& Company, were until the last few weeks engaged in the mer-  
cantile business at Buckhorn, in the County of Nansemond; that  
H. O. Winborne is a resident of the County of Nansemond, and  
Angie E. Winborne and J. R. Winborne are non residents of the  
State of Virginia, but have two valuable tracts of land lying  
in the County of Nansemond, near Buckhorn, one of which con-  
tains forty acres, more or less, is known as the "Jethro But-  
ler tract, and bounded by the lands of Jordan Holland's es-  
tate, James Holland and others; the second tract of land is  
adjoining the one above mentioned, containing sixty one and  
one half acres, and is bounded by the lands of Dempsey Butler  
and Jethro Butler, deceased's tract; which tracts of land  
are worth something like \$1000.00; that the said tracts of  
land are owned by the said Angie E. Winborne and J. R. Win-  
borne.

Your complainant states that the said H. O. Winborne &  
Company are indebted to them in the sum of \$411.58 with inter-  
est from the 1st. day of August, 1902, and that all of said  
indebtedness is due and payable, for goods sold and delivered  
to the said partnership at their special instance and request,  
and that the said H. O. Winborne is hopelessly insolvent, and  
is now in voluntary bankruptcy, and, as your orator is advised  
will pay a mere pittance of the indebtedness of H. O. Winborne  
& Company.

Your orator would further state that Angie E. Winborne and J.R. Winborne have no personal effects in this State known to him, and verily believes that they are contemplating conveying their property, or otherwise disposing of same, with intent to hinder, delay and defraud their creditors, and that unless an attachment is sued out and duly levied upon, that same will be placed beyond the reach of your orator and other creditors of the said defendant.

Your orator is advised that the said Angie E. Winborne and J. R. Winborne being non-residents of the State of Virginia, he is entitled to an attachment against their effects to the extent of the payment of the indebtedness due him with interest and cost.

In tender consideration whereof, and for as much as your orator is remediless in the premises, save by the aid of a court of equity wherematters of this kind are alone and properly cognizable, to the end that justice may be done, your orator prays that the said Angie E. Winborne, H. O. Winborne and J. R. Winborne may be made parties defendants to this bill and required to answer the same, but answers under oath are hereby expressly waived; that your orator's debt may be established against the said defendants with the force and effect of a judgment, and that the attachment on the real estate owned by the said Angie E. Winborne and J. R. Winborne may be declared valid, binding and effective; that the said real estate may be sold and the proceeds applied to the payment of your orator's debt; that all such orders and decrees may be entered, and general and special relief granted as the nature of his case may require or to equity shall seem meet. And notice is hereby given that the court will be asked to allow reasonable attorneys fee to counsel conducting this cause.

And your complainants will ever pray, etc.

W. B. Ferguson & Co.

McLemore & Corbitt p.q

In the Circuit Court of Nansemond County in the Chancery Cause of W. B. Ferguson, trading and doing business as W. B. Ferguson & Company, v. Angie E. Winborne, H. O. Winborne and J. R. Winborne, merchants and partners doing business as H. O. Winborne & Company.

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Your petitioner, Hecht-Hirschler Company, a corporation, respectfully represents, that there was instituted in the Circuit Court of Nansemond County, on the chancery side thereof, a certain suit, the title of which is the title above herein described, on September 5th., 1902, the object of which suit was to establish a debt due W. B. Ferguson & Company by H. O. Winborne & Company, and to declare the property of the said defendants as liable therefor, including certain real estate in the county of Nansemond owned by Angie E. Winborne as set forth in complainants bill.

Your petitioner also respectfully represents that they are creditors of the said defendants, who owe them the sum of two hundred and fourteen and 50/100 (\$214.50) dollars, with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 1902, which indebtedness is evidenced by open account, and that no part of same has been paid, but that all of same is still due to them.

Your petitioner joins in the statements and allegations as set forth in the complainants bill, and petitions this Honorable Court that they be allowed to come in as plaintiffs in this cause; that their claims may be ascertained and their debt given the force and effect of a judgment against the defendants; that the property of the said defendants may be subjected to the payment thereof; that the said Angie E. Winborne, H. O. Winborne and J. R. Winborne may be declared jointly liable to your petitioner for the amount due

to them, and that all such inquiries may be directed, accounts taken, and such other, further, general and special relief may be granted to your petitioner as the nature of this case may require or to equity shall seem meet. And your petitioner will ever pray, etc.

Hecht-Hirschler Company,

by E. E. Holland, its attorney

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, NANSEMOND COUNTY  
TOWIT

2nd. November Rules, 1902.

Angie E. Winborne, et al.

ads. In Chancery.

W. B. Ferguson & Co.

The joint and separate answer of John R. Winborne, Angie E. Winborne and H. O. Winborne, to a bill of complaint filed against them in the Circuit Court of Nansemond County by W. B. Ferguson, trading as W. B. Ferguson & Co.

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

That these respondents were never partners in the business of H. O. Winborne & Co. at Buckhorn, Va. That the respondent H. O. Winborne was the sole and only trader at Buckhorn Virginia under the name of H. O. Winborne or H. O. Winborne & Co.; that the true firm name of the said H. O. Winborne was H. O. Winborne and not H. O. Winborne & Co.

These respondents aver that H. O. Winborne alone was indebted to the complainant and that since he became so indebted he has filed his voluntary petition in bankruptcy in the District Court of the United States for the Eastern District of Virginia, praying to be discharged from his debts in accordance with the Act of Congress in such cases made and provided and on the            day of            , 1902 was duly adjudged a bankrupt; that in his said petition in bankruptcy the complainant is scheduled as a creditor of the said H. O. Winborne in the amount of \$468.66, and as such creditor is entitled, upon proof of his claim, to share in the assets of

the said bankrupt.

The respondents Angie E. Winborne and John R. Winborne are non-residents of the State of Virginia and Angie E. Winborne, solely, does in fact own the tract or tracts of land in Nansemond County described in complainant's bill, and John R. Winborne has no interest whatsoever therein, but they positively deny that either of them or the land of Angie E. Winborne is liable or responsible for the debts of the firm of H. O. Winborne or H. O. Winborne & Co. as alleged in said bill; these respondents emphatically deny any intention on their part to convey their property or otherwise dispose of the same with intent to hinder, delay or defraud their creditors, and they particularly deny that the complainant is any creditor of theirs.

All these respondents deny that there is any ground upon which an attachment can or should issue against Angie E. Winborne or John R. Winborne or either of them or against their property or the property of either of them.

And these respondents deny all fraud, unlawful combination and confederacy; and having fully answered the complainant's bill pray to be hence dismissed <sup>with</sup> their reasonable costs by them in this behalf expended, and they will ever pray etc.

Angie E. Winborne

John R. Winborne

H. O. Winborne

Robt. W. Withers p.q.

by Robt. W. Withers their  
atty, Defendants.

-----  
W. B. Ferguson, trading as W. B. )  
Ferguson & Company-----Complainant )

v. )

John R. Winborne, Angie E. Winborne )  
and H. O. Winborne,-----Defendants )  
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This cause came on this day to be heard on the bill and exhibits; the three several attachments issued September 5th., 1902, November 4th., 1902, and June 24th., 1905; the petition of Hecht-Hirschler Company; the joint answers of the defendants, John R. Winborne, Angie E. Winborne and H. O. Winborne filed November 14th., 1902, with general replication thereto; the depositions of witnesses, and was argued by counsel.

On consideration whereof, the court is of opinion that the evidence is not sufficient to sustain the allegations and of the bill that the defendants, John R. Winborne, Angie E. Winborne were co-partners with H. O. Winborne doing business as H. O. Winborne or H. O. Winborne & Company at Buckhorn, Virginia, and doth adjudge, order and decree that the bill of complaint and the petition of Hecht-Hirschler Company be dismissed as to John R. Winborne and Angie E. Winborne, and that the attachments heretofore issued against the said defendants' property be quashed and that the said defendants John R. Winborne and Angie E. Winborne recover of the complainants their costs in this behalf expended. And the cause as to them is ordered to be stricken from the docket.

At the instance of complainant, who desires to present a petition to the Supreme Court of Appeals of Virginia, reviewing this decree, it is ordered that the execution of the

same be suspended for the period of ninety days, when the said complainant shall give bond before the clerk of the said court in the penalty of two hundred and fifty (\$250.00) dollars, with a condition reciting this decree and the intention of said complainant to present such petition, or providing for the payment of all such damages as may accrue to any person by reason of the said suspension, in case a supersedeas to this decree shall not be allowed, and be effectual within the time so specified.

*On the back of the said decree is the following endorsement:*

*"Entered 13<sup>th</sup> day of July, 1903.  
Robt. R. Prentiss. Entered in the  
Chancery Order Book, #3, page  
673"*

H.O.W.  
Suffolk, Va., April 4th., 1901.

Mess. H. O. Winborne & Co.,

Tunis, N. C.

Gentlemen:-

The enclosed card calls for twelve (12) barrels of Flour. You do not say whether you want Patent or Straight. We presume that the Straight is wanted, but we prefer to be more positive.

As we have never before sold you goods, you will please send us a list of each members name of the firm, and give us the reason for changing the firms name from A. E. Winborne to H. O. Winborne & Co.

We hope you will understand our position thoroughly, as we desire to know to whom we are selling the goods, and as we have been selling A. E. Winborne, we would like to know more of the firm of H. O. Winborne.

Please state if all the members are married, and give the age of each individual member; if they are possessed of property state how much is held in the name of each individual member and where located.

As soon as we receive the information, which we hope and feel will be satisfactory, and a further explanation regarding the order for Flour, we shall be pleased to give same our attention.

Return the enclosed card with your reply.

Very truly,

W. B. FERGUSON & Co.

Tunis, N. C. April 5, 1901.

Gentlemen Your letter of today received. in reply will say Just file the order untill untill we can get a Statement to send you We must say that you are the first person that has asked for such information We hope to be able to pay any debt we may contract

H. O. Winborne & Co.

H.O.W.'s

Tunis, N. C., Jan 4 1902

Hollie I could not ship you the goods until tuesday they will be shipped by way of Franklin by Steamer I should not start to selling before Wednesday coming Hollie I sent you a lock to have put on the corn crib get Bud Winborne to put it on for me & I will pay him for it take care of Rosa and the peanuts & have them picked of just as soon as you can be carefull how you unpack the Boxes and dont Break anything & dont lose anything in the straw Hollie I expect to have a law suit with Gay over that \$73.70 that he gave me a draft for in favor of Lowenberg Pincus & Co of Norfolk Va after I left you last Wednesday Evening I saw him Gay at the Norfolk & Carolina Depot a few minutes before the train left I ask him for a check & he positively declared he would not give me another note nor a check either so you see it means a law suit Will order your goods from Baltimore Just as soon as I can make a payment to them Hollie take care of your Bills dont lose any bills or your expense Bill you get for freight in fact save all of your letters you do not know what you may want with them Hollie I do not know what to do with George I have not been offered but \$40.00 for him & I want you to tell me what you think is best for me to do I have bought another hog mate to the two I had already bought of Francis send me a statement of all bills you have. Just send me the amounts Gay has quit for good I think the mill will make shingles this year

Tunis N. C. Jan 10th., 1902

Dear Hollie We received your letter the 8th Was glad to hear that you are getting along all right Hollie when you get the hands to pick the peanuts hire Lonie or Whitney to stay and pick off with the hands & let them look after the peanuts

& see that hands do not waste them you will have to give him something extra to look after the hands but you see that Lonie or Whitney can pick off also have them picked off as early as possible & have them locked up Every night let hear if you got the goods I shiped you alright enclosed you will find a bill of Lading for all I shiped you

Hollie you had better Hire Lonie or Whitney to Just to look after the peanuts & to put all of the Vines away you see we want to save them for feed do not fail to have them saved look after your business and do not sell below cost look out for what it cost you I have ordered a bill from Baltimore for you as soon as it comes send me a telegram so I can come to help you open and mark them I ordered a bill of 1,62,00 from Baltimore Well I hope you are getting along alright good by from your Farther

John R. Winborne  
Sr.

May 27th, 1905.

Mrs. A. E. Winborne,  
Drum Hill, N. C.

Dear Madam:-

I beg to enclose you herewith a copy of a statement which has been made by Henry Lawrence of Tunis, N. C. Please let me know what answer you have to make to this testimony.

Yours very truly,

RWW/EK

Drum Hill N. C. 5/29/05

Mr. R. W. Withers

Dear Sir

In reply to your letter I will say I never told him any such thing in my life I never knew him I just knew of him his statement is absolutely false if it was the last words I ever had to speak I would say so

Yours truly

Mrs. A. E. Winborne

The following is the evidences agreed upon by Counsel for Plaintiff and defendants and necessary to be copied and to be read in the appellate court in the cause of W. B. Ferguson & Co., appellants v. H. O. Winborne, et als. appellees.

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The Witness, W. B. Ferguson, being first duly sworn deposes and says:

DIRECT EXAMINATION BY MR. McLEMORE:

Question- 1. What is your name, age, residence and do you know the parties to this suit?

Answer- W. B. Ferguson, 44 Suffolk, I know the parties to this suit, and am plaintiff in this cause.

Q. 2. Please state the circumstances under which you sold the goods to the Buckhorn firm of Winbornes, and who constituted that firm, if you know?

A. On or about January 2nd. 1902, John B. Winborne and H. O. Winborne came in my office and made a purchase of goods to be shipped to Buckhorn, Va. a short conference was held between John R. Winborne, H. O. Winborne and myself, in the sample room adjoining to my office, regarding the account for the Buckhorn store. Ther stated that H. O. Winborne & Co. had decided to open a store at Buckhorn, Va. They wanted to know if the account could be kept so that the store at Tunis and Buckhorn could show the separate transactions. I told them that I would make an effort to keep the bills in that shape. Perhaps other remarks were made not pertinent to the business, and I then introduced them to Mr. W. S. Cross, one of my salesman, who took the order. This order was shipped, and I am under the impressio that the bill was made and shipped to H. O. Winborne at Buckhorn, Va., as a matter of convenience and to distinguish the shipments to that store, at the request of J. R. and H. O. Winborne who called to make the purchase for the Buckhorn store. This covers the circumstances surrounding the first purchase.

Q. 3. Had they, either of them, been running a store anywhere else prior to this time?

A. The same firm composed of A. E. Winborne, John R. Winborne and H. O. Winborne, were customers of ours prior to the sale of this bill and shipments had been made to this firm at Tunis, N. C.

Q. 4. How do you know that these three persons named constituted the firm at Tunis?

A. Prior to the shipment to the Buckhorn store we had sold to the firm of E. A. Winborne, or perhaps it was E. A. Winborne & Co., at Tunis, N. C., Subsequently this firm at Tunis, N. C. sent us an order signed "H. O. Winborne & Co." Believing possibly it was the same firm under a new name, with perhaps new blood, I took the precaution to write and askd them for the individual members' names, and stated that we had never had the pleasuer of selling them, and also requested thwm to give us information regarding their individual worth.

This was in reply to an order that came as H. O. Winborne & Co. In connect on with this request items in this order, and requested a reply covering both points, up n receipt of which we would be glad to give the matter further attention. In response thathat request they wrote a card stating that we were the first to ask such questions, and to please hold the order until they could make such a statement as we required.

I took it that they desired to give tha information, and a short while after this card was written, Mr. John R. Winborne paid me a visit and stated that the members of the new firm were A. H. Winborne, John R. Winborne and H. O. Winborne.

Q. 5. Have you the card that he wrote you in reply to your letter?

A. yes. I herewith file same marked "H. O. W."

Q. 6. Have you a copy of the letter which you wrote H. O. Winborne & Co. that brought forth this postal card?

A. Yes. It is dated April 4th., 1901. I hand you herewith the original tissue and a copy of same transcribed for easy reading. (Copy filed marked "H.O.W. 2")

Q. 7. Witness is here handed a postla card dated Septemb r 13th., 1901, signed H. O. Winborne & Co. and filed herewith as exhibit "H.O.W" and asked if he known who wrote it.

A/ Of my own knowledge I do not. It corresponds to the hand -writing that we have previously had from the firm of H. O. Winborne & Co., and my understanding from the firm was that John R. Winborne conducted the correspondence.

Q. 8/ Did you have any further conversation or correspondence with John R. Winborne, H. O. Winborne or A. H. Winborne respecting to the Buckhorn business?

A. Prior to the interview which took place at the time the first bill was purchased, no. Subsequent to the first purchase Mr John R. Winborne called on several occasions to leave a small order for the Buckhorn store, and on one occasion stopped in and asked if we had received an order from the Buckhorn store, and if so to please hurry same forward.

Q. 9. Where did the order for the Buckhorn store come from?

A. The goods were purchased by John R. Winborne as a buyer. Mr. H. O. Winborne was present at the time the purchase was made.

Q. 10. Witness is here shown note for \$366.05, dated July 7th., 1902, signed H. O. Winborne & Co. and payable to W. B. Ferguson & Co. thirty days after date, and asked what this note represents and who executed it?

A. This note, to the best of my knowledge and belief, without reference to the books, embraces the renewal of a previous note and possibly takes in a part of the open account. The note was signed in my presence by H. O. Winborne.

Q.11. What is the remainder, if any, due by H. O. Winborne & Co?

A. The statement rendered by our book-keeper, and herewith filed as "H.O.W.4" shown June 20th. To Mdse. \$13.90, July 8th. \$20.88, and July 1st., interest on note \$2.75. The two first items are for merchandise. The statement also shows the amount of the note which has already been filed, making the total of \$411.58, which amount is still due and unpaid.

Q. 12. Who signed the note?

A. H. O. Winborne.

Q. 13. It is stated by H. O. Winborne in his testimony previously given in this case that the note was signed "H. O. Winborne & Co." at your suggestion, and to pay a bill due by H. O. Winborne, because, as he states, you said to him that the bank would not take it unless it was so signed. What is your recollection with respect to the execution of this note?

A. The note given previous to this was not clearly signed "H. O. Winborne & Co." I called his attention to the fact that the signature was not perfect, and to please write the note clear.

Q. 14. To whom did you give credit when you sold these goods to go to Buckhorn, and why?

A. At the request of John R. Winborne who has handled principally the business of the firm of A. E. Winborn & Co. and H. O. Winborne & Co., the credit was extended to the same firm. No reference was made to any change whatever, and the request to keep the bills separate was nothing more than we have done for other firms, and are doing to-day, in order that the separate stores may show the various shipments that go to them. So far as my knowledge at this time, or any other time, goes, the firm of H. O. Winborne & Co. composed of Mrs. A. E. Winborne, John R. Winborne and H. O. Winborne, composed the firm both at Tunis and Buckhorn, and were known to us as one and the same.

Q. 15. Who represented Mrs. A. E. Winborne in all the transactions which she had with your company?

A. John R. Winborne was the business manager. We had a visit from Mrs. A. E. Winborne on one or two occasions. I think on one occasion she paid some money, and on another occasion she left a small order.

Q. 16. Would you have sold goods to the Purvis store, giving credit to H. O. Winborne alone?

A. No, not unless some substantial basis for credit could have been shown.

Q. 17. What basis of credit was shown that made you sell to this store?

A. In our original transactions with the firm with A. E. Winborne, I think it was, or perhaps A. E. Winborne & Co., we located the property that was owned by Mrs. A. E. Winborne in this state near Holland, Va. Credit was executed principally upon this basis.

Q. 18. When John R. and H. O. Winborne came to your store on the occasion of purchase of the first bill of goods that went to Buckhorn, was there anything said about who constituted the firm which was buying these goods?

A. No reference was made to the firm except that they asked to have the bills kept separate in order that they might tell how the Buckhorn store was getting on. I treated the account as H. O. Winborne & Co., and never dreamed that a new firm had been formed. Certainly no intimation of that nature was made at any time, and the account, so far as we know, up to this time, was that of H. O. Winborne & Co.

Q. 19. Has Mrs. A. E. Winborne, personally or through any indirect ways or means, ever intimated to you, or your company the fact that she had drawn from the business, or was no longer to be held responsible for the debts of the partnership?

A. No, not directly or indirectly did we ever receive any such information, nor have we ever seen or heard of any dissolution.

Q. 20. Mr. John R. Winborne in his testimony states in reply to the question "Did you buy any goods for the Buckhorn house?, No Sir." And says further that his son, Holley, (H. O. Winborne) made arrangements with W. S. Cross for the credit bill of this Buckhorn business. What have you to say to this statement.

A. Mr. John R. Winborne made the purchase, to the best of my knowledge and belief, as far as I was able to know, for the firm of H. O. Winborne & Co. Mr. W. S. Cross took the order, but made no arrangements for the credit.

Q. 21. Mr. John R. Winborne also states that he stopped in at your place on one occasion after the Buckhorn business was in operation to pay you a small bill, and when informed of the amount he advised you that there was some error in it, and that you looked over the books with ~~some~~ assistance of your clerks and found out that "they had put Holley's account with mine", and that you said this was wrong, and it was one of Holley's accounts, and that you then changed it and put it to H. O. Winborne, and he paid his account in full. He also says at the same time that he told you he was not interested in H. O. Winborne at Buckhorn, and that H. O. Winborne & Co. at Tunis was entirely different from the Buckhorn business. What would you say with reference to these statements?

A. As Mr. Winborne fails to give the date of the visit, am therefore unable to refer to the records in order that a definite reply can be made. So far as the accounts being mixed, it would not be an unusual thing because we were treating the account as one and the same, endeavoring to accommodate, as far as we could to keep the accounts for their convenience separate. So far as a notice of their being two firms, I have no recollection, and can state positively that no such statement was ever made to me by John R. Winborne or any member of the firm of H. O. Winborne & Co.

Q. 22. Have you in your possession any written evidence showing or tending to show any connection between the Tunis and the Buckhorn business, and if so state what?

A. Here is a letter dated at Tunis, N. C. January 4th., 1902 in the handwriting of John R. Winborne, and was addressed to Holley. The contents will in my judgment show that the accounts were one and the same.

--Said letter is filed marked exhibit "H.O.W.No.5".--

Q. 23. How came this to be in your possession?

A. This letter came with the stock and other effects from the store at Buckhorn, Va., and was found among the invoices when the inventory was being appraised. I was assisting Mr. Cross in getting the stock of goods appraised.

CROSS EXAMINATION BY MR. R. W. WITHERS:

Q. 24. I understand that the only way you can connect A. E. Winborne with H. O. Winborne at Buckhorn is through a statement made by J. R. Winborne in person. Is this correct?

A. The firm of H. O. Winborne & Co. were represented to me in nearly all of the transactions in the person of J. R. Winborne. As stated before Mrs. Winborne paid us possibly one or two visits. Mr. J. R. Winborne was the business man of the firm.

Q. 25. For whom and when did A. E. Winborne pay you money and order goods?

A. I cannot say positively whether it was for H. O. Winborne & Co. or for A. E. Winborne or A. M. Winborne & Co.

Q. 26. Do I understand that you as plaintiff assert that A. E. Winborne and J. R. Winborne were in fact partners of H. O. Winborne at Buckhorn?

A. So far as H. O. Winborne & Co. is concerned, I knew no difference between that store and the store at Tunis, nor were we informed that there was any difference in the firm. The accommodation asked for in keeping the bill separate was the same that has been asked in many instances before where the same firm were operating two stores. As such I understand that these two stores were being operated by one and the same firm.

Q. 27. The licenses exhibited in the testimony clearly show that H. O. Winborne at Buckhorn had no partner in fact. Are these licenses correct or not?

A. I had no information regarding the licenses. I cannot say it is a fact of my own knowledge.

Q. 28. Then you do not assert that J. R. and A. E. Winborne were in fact partners, that is to say, has put money in the business, and expected return or profits therefrom?

A. I can say that so far as my own knowledge is concerned I cannot say who put the money in this concern.

Q. 29. If MR. H. O. Winborne, Mr. J. R. Winborne and Mrs. A. E. Winborne all testified in oath that J. R. Winborne and A. E. Winborne has in fact never put a dime in the business and were not in fact partners with H. O. Winborne, can you deny or affirm their statement?

A. Of my own knowledge, I cannot. They did not state at the time of the purchase for the Buckhorn store that there was any difference in the firm at this time, or that they expected to make any between it and the firm at Tunis, N. C.

Q. 30. Then your claim that Mrs. A. E. Winborne and J. R. Winborne are responsible for the debt contracted by H. O. Winborne at Buckhorn rests upon the ground that you understood that the members of the firm of H. O. Winborne & Co. at Buckhorn. That is correct is it not?

A. We did not extend credit to H. O. Winborne, it was extended to the firm of H. O. Winborne & Co. composed of H. O., J. R. and A. E. Winborne.

Q. 31. Have you not repeatedly stated that on the occasion of the purchase of the first goods shipped to Buckhorn that no credit was asked for directly to you by either J. R. Winborne or H. O. Winborne?

A. When the first purchase for the Buckhorn store was made it was made by H. O. Winborne & Co., represented by J. R. Winborne.

Q. 32. Please state the conversation at the time of the first visit of H. O. Winborne to purchase goods for the Buckhorn store?

A. The only recollection I have is contained in answer to question No. 2.

Q. 33. Then you do not undertake to give to the Court the language employed by the parties at the time, but you give your interpretation of the language. Can you not repeat just what Mr. Winborne said at that time?

A. The best recollection I have of what took place, except possibly the reference to the goods themselves, has been given in answer No. 2.

Q. 34. Did not these gentlemen converse with Mr. Cross to take the order before they saw you?

A. I don't know. Mr. Cross certainly had no conversation with them regarding credit. I know that they were turned over to Mr. Cross to take the order for the goods.

Q. 35. Has Mrs. A. E. Winborne in person ever had herself out to you as a partner of H. O. Winborne & Co?

A. In her visits referred to in this testimony, she did.

Q. 36. You stated that these visits were probably made when Mrs. A. E. Winborne was in business in her own name, that is, in 1900. Do you wish to change that testimony?

A. The testimony as given does not state that as a fact. It states that her visits were made possibly while the firm was A. E. Winborne or A. E. Winborne & Co. I do not care to change the testimony already given.

Q. 37. If her visits were made when the business was A. E. Winborne or A. E. Winborne & Co., explain how this is a holding out as to the business of H. O. Winborne & Co.

A. J. R. Winborne in person made a statement for the purpose of obtaining credit, that the firm of H. O. Winborne & Co. was composed of Mrs. A. E. Winborne, Mr. John R. Winborne and H. O. Winborne. This is the only statement that we have ever had regarding the firm of H. O. Winborne & Co.

Q. 38. Is it not true that the goods were shipped to H. O. Winborne, Buckhorn, Va., and that you were requested to keep the accounts separate from H. O. Winborne & Co. at Tunis? N. C.?

A. It is true that they requested us to keep the accounts separate as a matter of convenience. It is not true that all of the goods were billed and shipped.

Further this deponent saith not.

The witness, John L. Gay, being first duly sworn deposes and says:

DIRECT EXAMINATION BY MR. McLEMORE:

Q. 1. Please state your name, age, residence, and do you know the parties to this suit?

A. John L. Gay, 45, reside in Suffolk. I know the parties to this suit.

Q. 2. Are you in any way interested in the result of this suit?

A. Not at all.

Q. 3. Where were you operating in 1901?

A. I was operating at Tunis, N. C.

Q. 4. Were the defendants in this case living at Tunis at that time?

A. They were.

Q. 5. What were they doing?

A. Running a kind of store commissary for me. They furnished my hands at the mill. I was running or operating a saw mill at Tunis at that time.

Q. 6. What was the firm name of the parties who ran the commissary and store above referred to?

A. They had two different names there while at that place. J. R. Winborne & Co. and A. E. Winborne & Co., I think, as well as I remember.

Q. 7. Do you remember who constituted the firm when operating as A. E. Winborne & Co., or A. E. Winborne, and who constituted the firm when operating as J. R. Winborne & Co?

A. I will explain it to you. When they first started it was run as J. R. Winborne & Co., and Mr. and Mrs. Winborne was the partners. They constituted the firm. And then after a while they changed the name to A. E. Winborne & Co., and the young man, H. O. Winborne, came down to Tunis from Buckhorn, or near Buckhorn, and took an interest in the business, as I understand it and as they told me that he was a partner.

Q. 8. When did H. O. Winborne leave there and open store at Buckhorn, as near as you remember?

A. Sometime in the fall of 1902, as well as I remember. I made a mistake, it was 1901 that he left Tunis and went in business at Buckhorn.

Q. 9. How do you know it was 1901 instead of 1902?

A. Because I shut my mill down and stopped running or operating at Tunis December 1901, and of course he left before I did. When I first mentioned 1902, one year has just slipped my memory.

Q. 10. Do you know who composed the firm operating at Tunis immediately prior to and at the time you shut your mill down there?

A. Well, as I understood from Mr. Winborne and his wife, that he, J. R. Winborne, A. E. Winborne and H. O. Winborne was the partners, or the name of the partners in the business.

Q.11. Do you know who constituted the firm or owned the business at Buckhorn which was opened by H. O. Winborne at or about the time he left Tunis?

A. I only know what J. R. Winborne and A. E. Winborne told me; and they said that they and H. O. Winborne had opened a business or started a business at Buckhorn. After they stopped selling goods at my place I gave them a note for some money, and that note was lost in the mail, and they wanted me to make the note good by paying them the money. This I would not do until they indemnified me for so doing, and this is the time that A. E. Winborne stopped me in the road in front of their store and told me that they needed the money, and had to have it as they were running a business at Buckhorn and they needed the money to pay bills. When we had a trial as to whether I should pay the money or not without an indemnifying bond, J. R. Winborne made a statement in Court that J. R. Winborne and A. E. Winborne and H. O. Winborne was running a business at Buckhorn, and the firm was worth from \$2000.00 to \$2500.00 and they were responsible for their debts, and if the note ever turned up they would make it good, and upon his (J. R. Winborne's) statement the Justice of the Peace compelled me to pay the note and only take J. R. Winborne's bond for my security. And then is when he stated that he had his wife, or A. E. Winborne, and H. O. Winborne were running the business at Buckhorn.

Q. 12. Who actually attended to the store which was operated in Tunis during the latter part of 1901?

A. Why, J. R. Winborne and A. E. Winborne.

Q. 13. Did Mrs. A. E. Winborne stay in the store herself while the same was being run under the name of J. R. Winborne & Co.?

A. Yes sir.

Q. 14. Did Mrs. Winborne make any statement to you as to who were the partners in the presence of her husband, or was she alone?

A. Which company do you mean, or which firm do you mean?

Q. 15. I refer to the partnership at Buckhorn?

A. J. R. Winborne was standing in the store and she was in the porch, or just out of the porch on the ground, when she said that they were all running a store or business at Buckhorn, and needed the money to pay the bills.

Q. 16. Do I understand from your testimony that Mrs. Winborne personally was trying to collect the debt which they claimed that you owed them, at this time, for the firm at Tunis?

A. She asked me for the money and insisted on my paying of it, and really had more to say about it than J. R. Winborne.

Q. 17. Did Mrs. A. E. Winborne give any reason why she wanted this bill which you owed them at this particular time, and if so, what?

A. She said they were buying a good many goods to run their business at Tunis and Buckhorn, and she wanted the money in order to meet her payments.

CROSS EXAMINATION BY MR. WITHERS:

Q. 18. TO whom was your note which was lost payable?

A. HQ O. Winborne & Co.

Q. 19. During what time was it contracted?

A. Sometime in the Summer or Fall of 1901.

Q. 20. I understood your testimony to state that the business was run as A. E. Winborne & Co. up to the fall of 1901. Is that correct?

A. I did not so intend to state it. I stated this: as well as I remember it was J. R. Winborne at first, A. E. Winborne second and H. O. Winborne & Co. third, and H. O. Winborne & Co. were running the business the latter part of 1901, but what time it stopped that name I don't remember. They changed so much there that I could not keep up with it.

Q. 21. Do you remember the date of the trial when you were sued by H. O. Winborne & Co?

A. I do not, but it was sometime, as well as I remember, the first of 1902. I cannot say positively about that, I don't remember.

Q. 22. I understood you to say ~~that~~ <sup>that</sup> at that trial ~~J. R. Winborne~~ <sup>J. R. Winborne</sup> said that the firm H. O. Winborne & Co. was composed of A. E. Winborne, J. R. Winborne and H. O. Winborne.

Q. 23. Were either A. E. Winborne or H. O. Winborne present at that time?

A. They were not.

Q. 24. Was the indemnifying bond given you J. R. Winborne's or H. O. Winborne & Company's?

A. As well as I remember, it was H. O. Winborne & Co., as Mr. J. R. Winborne has just stated that H. O. Winborne & Co. was worth between \$2000.00 and \$2500.00, the Justice decided that their name or bond was sufficient after he made this statement? This is the best of my recollection.

Q. 25. You were sued by H. O. Winborne & Co. at Tunis on a lost note?

A. Yes Sir.

Q. 26. And the justice gave judgment against you, and required H. O. Winborne & Co. at Tunis to put up an indemnifying bond. Is that correct?

A. As well as I remember now that H. O. Winborne & Co. put the bond up.

Q. 27. Was it not of the interest of J. R. Winborne to state that the firm of H. O. Winborne & Co. at Tunis owned valuable property or assets?

--Objected to by plaintiff's counsel because it is calling for an opinion from the witness based upon no knowledge which he could have on the subject--

A. I suppose it was, but not enough to lie about on his oath.

Q.28. Please state what A. B. Winborne told you about her being a partner in the business at Buckhorn, if anything.

A. As I have before stated, when she asked me for the money I know she said they were running a business, or H. O. Winborne & Co. was running a business at Buckhorn, and they needed the money to pay the bills.

Q.29. Did she or did H. O. Winborne & Co., or H. O. Winborne say they were running a business at Buckhorn?

A. As well as I remember, she said H. O. Winborne & Co., because she was after this money that I owed to H. O. Winborne & Co., and she positively stated that she wanted the money to pay their bills, as they were buying goods for Tunis and Buckhorn and needed the money.

Q.30. When Mrs. Winborne saw you it was before the suit, was it not. I mean the suit against you?

A. It was.

Q.31. It was before you left Tunis, was it not?

A. It was not.

Q.32. Please fix the date as best you can.

A. I cannot exactly give you the date, as the note was a time note and after the note was due it was quite a while before this case was settled in court, and therefore I cannot give you the exact date when it was.

Q.33. When was the note due?

A. I don't exactly remember, but I think sometime before Christmas, 1901.

Q.34. How long before H. O. Winborne & Co. warranted you was it that you and Mrs. A. B. Winborne had the conversation referred to by you?

A. A month or more, I believe.

Q.35. You do know that it was before any threats of suit were made, do you not?

A. I don't remember.

Q.36. Do you not remember that it was before Christmas?

A. I cannot exactly say, but I rather think it was soon after Christmas, though I am not sure.

Q.37. After this time you were sued by H. O. Winborne & Co. at Tunis and judgment obtained against you. Please state if you have very kindly feelings for these people?

A. I have, and I have seen Mr. Winborne lately and got him to do favors for me, and I do the like for him.

REDIRECT EXAMINATION BY MR. McLEMORE:

Q.38. Did either Mr. Winborne or Mrs. Winborne in their conversation with you with reference to the Buckhorn business, say how much they had bought for ~~the~~store, or indicate anything about the size of the transactions at this point?

A. Nothing except what J. R. Winborne said in the trial of the case. He stated that they were doing a good business at Buckhorn and had just bought a large bill of goods, and were able to pay their debts, and that if they put up an indemnifying bond they were responsible for it. And Mrs. Winborne told me that they were doing a business over there, and needed this money to pay their bills, but did not say how many bills.

Further this deponent saith not.

The witness, W. S. Cross being first duly sworn deposes and says:

DIRECT EXAMINATION BY MR. McLEMORE:

Q. 1. Please state your name, age, residence and do you know the parties to the suit?

A. W. S. Cross, 30, reside in Suffolk, and know the parties to this suit?

Q.2. Are you in any way interested with either plaintiff or defendant or in the results of this controversy?

A. I am not.

Q.3. It has been testified here by one or two of the defendants that J. R. Winborne and H. O. Winborne about the time a business was opened at Buckhorn by the Winbornes, came to Suffolk and went to W. B. Ferguson & Co.'s, in which place you were at that time a salesman, and that they saw you and arranged terms of credit and bought a bill of goods from you at that time. Please state your recollection of this transaction.

A. Now, I cannot say positively whether I waited on these people or not the first time. So far as arranging credit, or terms of credit I did not.

Q.4. Did they take up the question of terms of credit with you at all?

A. I don't think they did. I cannot say positively.

Q.5. Can you say positively that you did not arrange with them as to the terms of credit?

A. I can.

Q.6. Was this any part of your business?

A. It was not, where people were buying their first bills at the house.

Q.7. Who has the control of the credit department or fixes the terms upon which goods are sold?

A. W. B. Ferguson.

Q.8. I do not remember selling the first bill. I don't know whether I sold the first bill or not. It seems to me it was the old man and his son I waited on but I don't know whether it was the first time or not.

Q.9. At the time you waited on J. R. Winborne and H. O. Winborne(that is, the old man and his son), please state the circumstances as you remember them.

A. As I remember they were in the office when I came in, I think, from one of my trips. Mr. Ferguson called me in the office and asked me to wait on them. I think that is the way, I cannot say positively.

Q.10. And you sold them what they desired to buy without mentioning terms of credit?

A. I did.

Q.11. If H. O. Winborne had come into the store and said, Mr. Cross I wish fifty or one hundred dollars worth of goods shipped to me at Buckhorn, what would you have done?

A. I would have taken the order and taken it to Mr. Ferguson

Q.12. Did you, after taking the order at the time you remember waiting on J. R. and H. O. Winborne, carry it to Mr. W. B. Ferguson?

A. I think I did, as that was the rule in accepting orders for the house.

Further this deponent saith not.

The witness F. A. Holliday, being first duly sworn deposes and says:

DIRECT EXAMINATION BY MR. McJEMORE:

Q.1. Please state your name, age, and residence?

A. F. A. Holliday, 32, Suffolk, Va.

Q.2. This is a case of W. B. Ferguson v. J. R. Winborne, A. F. Winborne and H. O. Winborne. Do you know the parties to this suit?

A. I only know H. O. Winborne and W. B. Ferguson.

Q.3. Tell what, if any, conversation you ever had with H. O. Winborne with reference to this mercantile interests?

A. I had been selling H. O. Winborne & Co. at Tunis, N. C., and H. O. Winborne came in my store in Suffolk and asked for a bill of goods to be shipped to him at Buckhorn, Va. I asked if it was the same concern as H. O. Winborne & Co. at Tunis, and he said I am H. O. Winborne of Tunis, and I want this shipped to the same concern at Buckhorn, and as I had already been informed that H. O. Winborne & Co. at Tunis were all right, I did not hesitate to send his order to Buckhorn. That is all I knew until I got a Bankrupt notice.

Q.4. Did you make any different account on your books for the Tunis and Buckhorn firm?

A. No, I charged the same concern.

CROSS EXAMINATION BY MR. WITHERS:

Q.5. You have repeated the statement made by Mr. Winborne and not your interpretation of his statement in your answer. Is this correct?

A. That is what he said.

Q.6. What did he say?

A. It has been a year and a half since he made that statement to me, and it is hard to tell now exactly word for word as he said it, but I know well he said he was H. O. Winborne of H. O. Winborne & Co. at Tunis, and I asked him if he was the old man, and he said, No, I am the young man, H. O. Winborne.

REDIRECT EXAMINATION BY MR. McLEMORE:

Q.9. Do you remember the date?

A. No, but I can tell you from my books.

Q.8. Can you tell about when this conversation occurred?

A. I can tell you by looking on my books. It was about the time, a few days or a week after he had opened the store at Buckhorn, I think.

Further this deponent saith not.

The following is the evidence agreed upon by Counsel for Plaintiff and defendants and necessary to be copied and to be read in the appellate Court in the cause of W. B. Ferguson & Co., appellants v. H. O. Winborne, et als. appellees.

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The witness, W. H. Piland, being first duly sworn deposes and says:

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

A. W. H. Piland, 34, reside in Portsmouth, am a licenced steam boat engineer, and know the defendants in this suit but do not know the plaintiffs.

Q.2. Where were you living in the year of 1901 and 1902?

A. At Tunis, N. C.

Q.3. About when did you leave Tunis and go to Portsmouth?

A. I went to Portsmouth in October, 1903.

Q.4. Had A. E. Winborne, J. R. Winborne and H. O. Winborne left Tunis before you left, and if so about how lang?

A. Yes sir. They left Tunis in December 1902, and I left in October, 1903.

Q.5. Did you know these people very intimately while you were there?

A. Yes sir, I saw them every day of my life.

Q.6. Did all of the Winbornes leave Tunis at the same time?

A. No, H. O. Winborne left before the others did.

Q.7. Do you know where they went?

A. J. R. Winborne and A. E. Winborne went to Elizabeth City, and H. O. Winborne went to Purvis, I suppose. That is what they said.

Q.8. Do you know anything about the trial before the Justice in which the Winbornes sued John L. Gay?

A. Yes, I was at the trial.

Q.9. Were you summoned there or did you just happen there?

A. I just happened to be there.

Q.10. Did you hear the testimony of J. R. Winborne in this trial?

A. I did.

Q.11. What did he say with reference to the partnership, if anything?

A. He said that the firm of H. O. Winborne & Co. were worth \$2500.00 and were amply responsible for any endorsements to the note, or to that effect, that they should make. I don't know the exact language used, but I know that was the substance of it.

Q.12. Did he say anything about who composed the firm?

A. Yes sir, J. R. Winborne, H. O. Winborne and A. E. Winborne.

Q.13. Was anything said by Mr. Winborne in this trial about what business these three people were running?

A. He said they were conducting a mercantile business at Tunis, N. C. and Buckhorn, Va. and that they had recently purchased a large amount of goods for the two places.

Q.14. Was A. E. Winborne present at this time?

A. No sir.

Q.15. Where was Mrs. A. E. Winborne living at this time?

A. At Tunis, N. C.

Q.16. About when was the trial?

A. To the best of my recollection it was in the spring of 1902, early Spring or Winter 1902.

Q.17. Where was Mrs. Winborne at this time staying?

A. Tunis.

Q.18. Who was in actual charge of the mercantile business at Tunis?

A. J. R. Winborne and A. E. Winborne.

Q.19. Did Mrs. A. E. Winborne give the business at Tunis any of her personal attention?

A. She did. She was there all day and nights until they closed up.

Q.20. Do you mean that she was in the store personally overseeing the same?

A. Yes.

Q.21. Did you ever hear Mrs. A. E. Winborne make any statement with reference to the business at Buckhorn, and if so who was present, and the circumstances connected therewith, as near as you can?

A. Yes, I heard her say that one day I was in the store and they were shipping goods that day from Tunis to Buckhorn, and she said, that Polley was running short of that line of goods and that they had more than their stock there required, and that they were shipping a portion of them to Holley. J. R. Winborne and his small son, Johnny, were present.

Q.22. Do you know whether they shipped goods from this store to Holley more than once?

A. I do. I know they shipped him twice or more. I recollect twice.

Q.23. Did you ever hear Mrs. Winborne say who composed the firm or owned the business at Buckhorn?

A. I did.

Q.24. Who did she say owned it?

A. "Myself, John (referring to her husband) and Holley."

Q.25. Were you present, or did you ever hear her say anything to Mr. Gay about paying the note that was sued on at Winton?

A. I was present and heard her say to Mr. Gay that she thought he had treated her very badly; that they were owing bills for the Tunis store and at Buckhorn, and that they needed money to pay the bills.

Q.26. About how many goods were being shipped to Holley at the time that you referred to as being in the store?

A. I could not say. There were two or more boxes. I could not say positively, of course I don't know what were in those boxes.

Q.27. About how long before they closed the store at Tunis as well as you remember?

A. I think it must have been some eight months, probably longer, I don't recollect exactly.

Q.28. Was that shipment before or after the suit at Winton?

A. Before the suit at Winton?

Q.29. About how long from the time of the suit at Winton was it before they closed their store at this place?

A. It must have been ten months or eleven months. My recollection of the suit at Winton is that it was in the Winter or early Spring of 1902, and they closed business at Tunis in December 1902 I recollect distinctly.

CROSS EXAMINATION BY MR. WITHERS:

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Q.30. The two shipments made from Tunis to Buckhorn must have occurred then in January or February, 1902?

A. About that time. I don't recollect the dates exactly, because I never expected to hear of it again.

Q.31. Were not both of these shipments household goods for the use of H. O. Winborne?

A. No sir, neither one of these shipments were not, because they were shipped from the store.

Q.32. I do not mean altogether household goods, but I mean household and store fixtures?

A. Possibly some of them were store fixtures. I don't know what was in the boxes.

Q.33. Such as bed-clothing, lamps, scales.

A. I am unable to say about that.

Q.34. Was not the other shipment over-alls?

A. I could not say. I don't know what the boxes contained. I know they handled a good many over-alls at Tunis.

Q.35. At the trial between Gay and the Winbornes at Winton was not a statement made by John Winborne as follows: Gay had given his note to pay a debt he owed Winborne, and Winborne had lost the note and were suing Gay on the lost note; and after the trial after the Justice had given judgment against Gay he objected saying, in effect, that some one might find the note and bring it up against him, and then the Justice said that the Winbornes must put up an indemnifying bond, then the question was raised as to who would be surety on the bond, and John Winborne said that he would give the bond and A. E. Winborne and H. O. Winborne would be surety. The question was then asked as to what they were worth, and then it was that he said that the three of us are worth \$2500.00; that we have stores at Buckhorn and Tunis, and we have recently bought some goods, or words to that effect?

A. Yes sir, the statement that he made was to that effect and he said that the firm of H. O. Winborne & Co. would sign the bond. It was then asked who the firm of H. O. Winborne was and he said it was J. R. Winborne, A. E. Winborne and H. O. Winborne.

Q.36. Did he say that the firm of H. O. Winborne & Co. would sign the bond?

A. He said that the Firm of H. O. Winborne & Co. would sign it.

Q.37. Was not this bond signed J. R. Winborne, H. O. Winborn and A. E. Winborne offered as sureties?

A. I am unable to say, I never saw the bond.

Q.38. Is it not true that Gay and the justice would not accept these sureties, and that Mr. Ben Baines was called on and did become surety on the bond?

A. I am unable to say in regard to Baines.

Q.39. This has been several years ago?

A. Yes.

Q.40. Do you undertake to give the exact language of J. R. Winborne on that occasion?

A. No sir, I simply give it in detail as near as I can.

Q.41. Your statement and Mr. Winborne's are not very different in their language, but are very different in their legal effect. Mr. Winborne states that he offered the three parties named, A. E. Winborne, H. O. Winborne and J. R. Winborne on the bond. You state that he offered the same three on the bond and stated that they constituted the firm of H. O. Winborne & Co. I asked you if you are not quite certain of the identical language of Mr. Winborne on this occasion?

A. I am not.

Q.42. I ask you now, might you have not given one or two words different from the way they actually were spoken?

A. Possibly I might.

Q.43. Please tell me the circumstances under which you heard Mrs. Winborne say that she, John and Holley composed the firm of H. O. Winborne & Co. at Buckhorn, if she said so?

A. I heard her say that they were buying goods for both places and my memory is not clear on that, I would say.

Q.44. Then I understand that you wish, to this extent only, to change your direct testimony?

A. I do.

Q.45. When Mrs. Winborne said to Mr. Gay that we are needing money to pay our bills, where was she and where were you and Gay?

A. I was standing on the ground in the road right in front of Winborne's store at Tunis, and Mrs. Winborne was either standing on the stoop or on the ground right in front of the store.

Q.46. And what was her exact language?

A. She told Mr. Gay that she thought he has treated her rascally, that he owed them money and that they needed the money to pay their bills with; they were owing bills for Tunis and Buckhorn at that time.

Q.47. Do you remember when this conversation took place?

A. I could not say sir.

Q.48. Was it not before Christmas, 1901?

A. I think it was just before Christmas. My recollection is not clear on that point, but I think it was.

Q.49. I wish you would try now to refresh your memory as to the time these words were spoken, as it is important?

A. I think it was just before Christmas, 1901.

Q.50. Are you quite certain that she used the words "we are owing money at Buckhorn?"

A. I am.

Q.51. Did she say we are owing money for goods which have been sent or shipped to Buckhorn?

A. We are owing money for goods at Buckhorn and Tunis. Now whether she said goods shipped to Buckhorn or goods bought for Buckhorn, I don't remember. She simply said we are owing money for goods at Buckhorn and Tunis. That is the substance of what she said.

Q.52. If she owed for over-alls, a part of which she had sent to her son at Buckhorn, she would be owing for goods at Buckhorn and Tunis would she not?

A. Yes sir, certainly.

Further this deponent saith not.

In the Circuit Court of Nansemond County, Virginia.

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W. B. Ferguson & Co.,

v.

Angie E. Winborne et als.  
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The depositions of Mr. J. A. Holloman and Hon. George Cooper, citizens of Gates County, in the State of North Carolina, taken before Mr. S. S. Daniel, a Justice of the Peace, for the said county of Gates, in pursuance of interrogatories herewith submitted, the said interrogatories being agreed to by counsel for plaintiffs and defendants, and formal authentication of the deposition is also hereby waived; the said evidence being taken to be read in the above named chancery cause of W. B. Ferguson & Co. v. Angie E. Winborne and others.

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The witness, J. A. Holloman, being first duly sworn deposes and says:

Q.1. What is your name, age, residence, occupation, and do you know the defendants to this suit, namely, J. R. Winborne, H. O. Winborne and Mrs. Angie E. Winborne, the wife of J. R. Winborne?

A. John A. Holloman, 37, Tunis, N. C., Farmer and timber buyer, yes.

Q.2. Were you present during the progress of a trial sometime during the year of 1902, in which H. O. Winborne & Co. sued John L. Gay before the Justice A. J. Parker? If so state as near as you can when and where the trial occurred.

A. Yes, in Winton, N. C., January 25th. 1902.

Q.3. Did either of the plaintiffs in that case on that occasion, state who composed the firm of H. O. Winborne & Co. and if so, which one of them stated?

A. Yes, John R. Winborne.

Q.4. Please state what was said, if anything, with reference to the business at Purvis, or Buckhorn, in Nansemond County?

A. John R. Winborne said that the business at Buckhorn or Purvis, Va. belonged to the same partners as the business at Tunis, N. C.

Q.5. Was any statement made, and if so by whom, concerning the amount of goods bought for the partnership, and the financial standing of the firm?

A. Yes, John R. Winborne stated two thousand dollars worth of goods was bought for the partnership, one half of which was to be shipped to Purvis or Buckhorn, Va. where the said partnership was conducting a mercantile business

Q.6. Please state any other matter or thing that you may know, or may have heard either of the parties constituting the firm of H. O. Winborne & Co. say with reference to the partnership business.

A. John R. Winborne stated that the firm of H. O. Winborne & Co. consisted of H. O. Winborne, Angie E. Winborne and himself and that they did have from two thousand to twenty-five hundred dollars in cash to carry on said business.

Interrogatories filed for the cross-examination of Mr. J. A. Holloman.

Q.1. Referring to Question 2 in your direct examination, please state whether or not you were interested in this trial as a witness, or simply a bystander? For what was H. O. Winborne & Co. suing John L. Gay? When did the cause of action or debt arise? If an account, during what year was it contracted or made, 1900, 1901 or 1902?

A. Had no interest in it, was simply a bystander. It appeared from the evidence that John L. Gay has given H. O. Winborne & Co. his note for \$73.70 which note said Winborne & Co. had lost and was suing to recover said same.

Q.2. Referring to Question 3 in your direct examination, who were the plaintiffs in the case, and if the plaintiff stated the names of the members of H. O. Winborne & Co. as of what time did his statement cover, 1901, 1902 or 1903? Was Angie E. Winborne or H. O. Winborne present at this time?

A. H. O. Winborne & Co., yes, H. O. Winborne, Angie E. Winborne and John R. Winborne. John R. Winborne made this statement, at the time that the firm was composed of the above named parties. No neither of them was present.

Q.3. Referring to Question 4 in your direct examination what business at Buckhorn or Purvis in Hansemond County are you talking about? Who said anything about it then? What did any business in Hansemond County have to do with an action at law between H. O. Winborne & Co., of Tunis, and John L. Gay?

A. The mercantile business referred to in my answer to question number 4 on direct examination, John R. Winborne John R. Winborne stated that the firm of H. O. Winborne & Co. were the same at Purvis or Buckhorn, Va. and Tunis, N. C.

Q.4. Referring to Question 5 in your direct examination what partnership and the financial standing of what firm are you speaking? Who were the partners and how did you know they were partners?

A. Of H. O. Winborne & Co., John R. Winborne stated the partners were H. O. Winborne, Angie E. Winborne and himself.

Q.5. Question 6 in the direct examination of this witness is objected to by the defendants as being beyond this issue and res inter alios actae.

Q.6. What do you know about an alleged partnership between Angie E. Winborne and H. O. Winborne, doing business at Buckhorn, Virginia?

A. Nothing more than what was stated by John R. Winborne.

Q.7. To your knowledge were A. E. Winborne and H. O. Winborne ever partners in business, if so, when and where and how do you know?

A. I only know what John R. Winborne stated upon the occasion heretofore referred to.

The witness, George Cowper, being first duly sworn deposes and says:

Q.1. What is your **name**, age, residence, occupation, and do you know the defendants to this suit, namely, H. O. Winborne, J. R. Winborne and Angie E. Winborne the wife of J. R. Winborne?

A. George Cowper, 55, Winton, Atty. at Law. I know John R. Winborne; with the others I have no personal acquaintance.

Q.2. Were you present during a process of a trial sometime during the year 1902, in which H. O. Winborne & Co. sued John L. Gay before Justice A. J. Parker? If so, state as near as you can when and where the trial occurred?

A. Yes sir, the trial took place January 25th. 1902, in my office in the town of Winton, N. C.

Q.3. Did either of the plaintiffs in that case, on that occasion, state who composed the firm of H. O. Winborne & Co, and if so, which one of them so stated?

A. J. R. Winborne stated that the firm of H. O. Winborne & Co. was composed of H. O. Winborne, Angie E. Winborne and himself.

Q.4. Please state what was said, if anything, with reference to the business at Purvis, or Buckhorn in Hansemond County?

A. J. R. Winborne stated that the said firm was carrying on a Mercantile business at Purvis or Buckhorn, Va.

Q.5. Was any statement made, and if so by whom, concerning the amount of goods bought for the partnership, and the financial standing of the firm?

A. Yes sir, J. R. Winborne stated that the firm of H. O. Winborne & Co. had purchased two thousand dollars worth of goods, one half of which was shipped to Purvis to said firm and other one half to said firm at Tunis; that said firm was entirely solvent, being worth \$2500.00, I think in excess of liabilities.

Q.6. Please state any other matter or thing that you may know, or may have heard any of the parties constituting the firm of H. O. Winborne & Co say with reference to the partnership business?

A. Know nothing else.

Interrogatories filed for the cross-examination of Hon. George Cowper.

Q.1. Referring to Question 2 in your direct examination, please state whether or not you were interested in this trial as a witness, or simply a bystander? For what was H. O. Winborne & Co. suing John L. Gay? When did the cause of action or debt arise? If an account, during what year was it contracted or made, 1900, 1901 or 1902?

A. I was John L. Gay's attorney in said suit, for the recovery of \$73.70 due by note.

Q.2. Referring to Question 3 in your direct examination who were the plaintiffs in the case, and if the plaintiff stated the names of the members of H. O. Winborne & Co. as of what time did his statement cover, 1901, 1902 or 1903? Was Angie E. Winborne or H. O. Winborne present at this time?

A. H. O. Winborne & Co. J. R. Winborne, who was present and prosecuting the suit, stated that H. O. Winborne & Co. was composed of H. O. Winborne, Angie E. Winborne and himself; he made no statement as to when partnership was formed, No.

Q.3 Referring to Question 4 in your direct examination what business at Buckhorn or purvis in Nansemond County are you talking about? Who said anything about it then? What did any business in Nansemond County have to do with an action at law between H. O. Winborne & Co., of Tunis, and John L. Gay?

A. The mercantile business spoken of by J. R. Winborne. J. R. Winborne in the action above referred to judgment was given plaintiff for \$73.70 with interest until paid. The amount sued for was evidenced by a note given by John L. Gay the plaintiffs. It was admitted by plaintiffs that said note had been lost and they could not produce it. Judgment was rendered as above stated upon the condition that no execution issue on it until the plaintiffs file with the Court a good and sufficient bond in the sum of seventy five dollars to be approved by the Court, to indemnify said Gay against the payment of said lost note said J. R. Winborne offered the court a bond in the sum required to be executed by H. O. Winborne & Co., said firm composed of H. O. Winborne Angie E. Winborne and himself. Upon the courts examining him touching the solvency and responsibility of the proposed obligation, he stated that they were only solvent and worth, I think, \$2500.00 in excess of their liabilities and legal exemptions.

Q.4: Referring to Question 5 in your direct examination what partnership and the financial standing of that firm are you speaking of? Who were the partners and how did you know they were partners?

A. H. O. Winborne & Co. J. R. Winborne stated that H. O. Winborne, Angie E. Winborne and himself composed the partnership.

Q.5. Question 6 in your direct examination of this witness is objected to by the defendants as being beyond this issue and res inter alios actae.

Q.6. What do you know about an alleged partnership between Angie E. Winborne and H. O. Winborne, doing business at Buckhorn, Virginia?

A. Nothing except statement made by John R. Winborne which have been referred to in my answer made in this deposition.

Q.7. To your knowledge were A. E. Winborne and H. O. Winborne ever partners in business, if so, when and where and how do you know?

A. The only knowledge I have is from the statement made by John R. Winborne to which I have already referred in this deposition.

The witness, Henry Lawrence being first duly sworn  
deposes and says:

Q.1. Where were you living during the time that A. E. Winborne and J. R. Winborne lived at Tunis and conducting a commissary store there, and did you know them at that time?

A. I was living at Tunis. Yes I know them.

Q.2. Do you know about what time Holly Winborne left there and opened up a store at Buckhorn or Purvis?

A. He left Tunis about the last of the summer or early in the fall of 1901.

Q.3. Do you know who composed the firm and was doing business at Tunis at that time known as H. O. Winborne & Co., and who composed the firm at Buckhorn?

A. H. O. Winborne, Mrs. A. E. Winborne and J. R. Winborne composed the firm at both places.

Q.4. When and what had you ever heard Mrs. A. E. Winborne say about this partnership, about the business at Buckhorn or Purvis, and especially as to who composed the partnership or owned the business there?

A. On several occasions I heard her say that she and J. R. Winborne and H. O. Winborne owned the business at both places and that the business at Buckhorn or Purvis was owned by the same firm that owned the business at Tunis.

Q.5. When did Mrs. Winborne say this?

A. About the time they were suing John L. Gay. I asked her on one occasion if she and J. R. Winborne and H. O. Winborne were interested in the business at Buckhorn or Purvis and she said they were.

APPELLEES' EVIDENCE.

The witness, John R. Winborne, being first duly sworn deposes and says:

Q.1. What is your name, age, residence and occupation?

A. John R. Winborne, 52, Elizabeth City, N. C., merchant.

Q.2. Did you ever live in Tunis, N. C.

A. Yes sir.

Q.3. What was your business in Tunis?

A. Mercantile.

Q.4. Did you have a partner, if so, who?

A. Yes sir, H. O. Winborne.

Q.5. Is this partnership still in existence?

A. No sir.

Q.6. When and how did the partnership dissolve?

A. I bought out H. O. Winborne in December 1901.

Q.7. What did Mr. H. O. Winborne then do?

A. He went in mercantile business at Buckhorn or Purvis.

Q.8. Under what firm name did he operate?

A. H. O. Winborne.

Q.9. Were you a partner either active or silent in that business?

A. No sir, I certainly was not.

Q.10. Did you have any interest in it whatever?

A. Not one cent sir.

Q.12. Did you share any of the profits?

A. No sir, I certainly didn't.

Q.13. Did you buy any goods for the Buckhorn house?

A. No sir.

Q.14. Did you sell any goods for that house?

A. No sir.

Q.15. Messrs. W. B. Ferguson & Co. have brought a suit against you, your wife and H. O. Winborne charging that all of you were partners in the business of H. O. Winborne, or H. O. Winborne & Co. doing business at Buckhorn, Va., between January 1902 and the summer of 1902. Please state what if any connection you had with the firm.

A. None whatever.

Q.16. Do you own any real estate in Nansemond County?

A. No sir.

Q.17. Are you interested in the property of your wife which has been attached by W. B. Ferguson & Co?

A. No sir.

Q.18. Are you interested in the personal property formerly used by H. O. Winborne at buckhorn and which has been attached in the hands of W. S. Cross by Ferguson?

A. No sir.

Q.19. When Mr. H. O. Winborne began business and came to Suffolk to buy goods of W. B. Ferguson & Co. did you accompany him?

A. Yes sir, that is I met him there.

Q.20. Please state what occurred in the store of W. B. Ferguson & Co?

A. We went into Mr. Ferguson's store and Mr. Cross met us and told him that Holly wanted to engage in business at Buckhorn and he says well I sold him at Tunis and of course I will have to do it there and that is all that passed between us that I know of.

Q.21. Did H. O. Winborne make his arrangements for credit with Mr. Cross that day?

A. Yes sir.

Q.22. Was Mr. Ferguson present?

A. No sir, I am not certain that I saw him that day, but if I saw him, it was after Holly had purchased the goods.

Q.23. Did you accompany your son to Ferguson's store after this?

A. I am not certain, I don't recollect whether I did or not.

Q.24. Do you remember seeing Mr. Ferguson again?

A. No sir I do not, I am not certain.

Q.25. Did you have any transaction with Mr. Ferguson which made it necessary to tell him that your business at Tunis was not the same as Mr. H. O. Winborne's at Buckhorn, if so, what and how?

A. Yes sir, I owed Mr. Ferguson a little and I stopped in there to pay him and I asked him for my account and he turned to it and told me what it was and I said Mr. Ferguson there is something wrong about it and he looked over it and called one of his clerks there and they found out how it was, they had put Holley's accounts with mine, then I took my book out and called over the several purchases and payments and he recalled that it was wrong that it was one of Holley's accounts, he changed it then and put it to H. O. Winborne Buckhorn, and I paid him my account in full.

Q.26. Did you tell Mr. Ferguson then that you were not interested in H. O. Winborne?

A. Yes sir, I told him this that I had no business with H. O. Winborne & Co. at Tunis that it was a separate firm from H. O. Winborne at Buckhorn.

Q.27. Have H. O. Winborne and A. E. Winborne ever been partners?

A. No sir.

CROSS EXAMINATION BY MR. McLEMORE.

Q.28. Who composed the business at Tunis?

A. H. O. Winborne and J. R. Winborne.

Q.29. Was Mrs. A. E. Winborne ever interested directly or indirectly in the Tunis Firm?

A. No sir.

Q.30. What time did the partnership between H. O. Winborne and J. R. Winborne cease?

A. Some time in December, I don't recollect, sometime in 1901.

Q.31. Were you and Mrs. A. E. Winborne present at a trial in Winton in which H. O. Winborne & Co. brought action against John L. Gay?

A. No sir.

Q.32. Who was present as to the interested parties?

A. There was no one, except one or two witness I had and I don't recollect who they were now.

Q.33. Were you present?

A. Yes sir.

Q.34. Was your son present?

A. No sir.

Q.35. Where was the trial?

A. It was in Judge Coopers office.

Q.36. Mrs. Winborne was not present?

A. No sir.

Q.37. Did you not then and there state in the presence of the justices Mr. John L. Gay and Mr. John Holloman that your firm at Tunis was composed of yourself and your wife?

A. No sir, I did not.

Q.38. Did you not tell Mr. W. B. Ferguson in his store that you, your son and your wife were partners?

A. No sir, I did not, nor can I believe that Mr. Ferguson will make any such statement.

Q.39. Did you not later or about the same time tell Mr. Frank Holliday that the partnership was composed of the three last names?

A. I never mentioned it to Mr. Frank Holliday? I don't even know him, if I was to see him now, I wouldn't know him.

Q.40. Witness is here shown a note dated July 7, 1902 payable 30 days after date to W. B. Ferguson & Co. for \$366.05 and signed H. O. Winborne & Co. and asked who signed the note and who composed the firm?

A. I certainly didn't sign it, if there was any firm I didn't know anything about it, if there was ever any firm I don't know anything about it.

Q.41. Do you know the handwriting attached to this note?

A.. I do not know, it favors Holley's, but I couldn't swear to it.

Q.42. Do you know who composed the firm of H. O. Winborne & Co. at Tunis?

A. In 1901 H. O. Winborne and J. R. Winborne composed the firm but who composed it at Buckhorn I do not know.

Q.43. Who was in actual charge at Tunis before your son came to Buckhorn?

A. H. O. and J. R. Winborne.

Q.44. When was A. E. Winborne in charge at Tunis?

A. 1900.

Q.45. How did her interest terminate?

A. We bought her out.

Q.46. While she was the owner of the business, who conducted and managed the same for her?

A. I, myself.

Q.47. Had you the authority from her to buy goods and sign her name to notes?

A. Yes sir.

Q.48. What was the firm name at that time?

A. A. E. Winborne & Co.

Q.49. When you bought out H. O. Winborne in December 1901 how much did you pay for his interest?

A. I don't recollect, the books show but I don't recollect.

Q.50. Was it as much as \$500.00?

A. No sir.

Q.51. Can you give any idea of the approximate amount?

A. No sir.

Q.52. Do I understand from your testimony that you have had authority and still have in matters relating to Mrs. A. E. Winborne's property interest to represent her as her agent?

A. Well I do to certain extent.

RE-DIRECT EXAMINATION.

Q.53. Witness here shown note introduced dated July 7, 1902 and asked if H. O. Winborne & Co. at Tunis owed Ferguson & Co. \$366.05 at that time?

A. No sir.

Q.54. Did you owe him anything at that time?

A. No sir.

Q.55. Do you owe him anything now?

A. No sir, not one penny.

Q.56. Was this note given in any debt contracted by or for goods used in the business of H. O. Winborne & Co. at Tunis?

A. No sir.

Further than this the deponent sayeth not.

Signature waived by consent.

The witness, Mrs. A. E. Winborne, being first duly sworn  
deposes and says:

Q.1. Please state your relation to J. R. Winborne and H. O. Winborne?

A. H. O. Winborne is my son, and J. R. Winborne is my husband.

Q.2. Has J. R. Winborne any interest in your property in Nansmond County?

A. No sir.

Q.3. How did you get this property, from whom?

A. I bought it from my father.

Q.4. Were you ever a partner in business with H. O. Winborne either at Tunis or Buckhorn?

A. No sir.

Q.5. Were you a partner of the firm of H. O. Winborne & Co. at Tunis after December 1901?

A. No sir, I wasn't any partner in 1901.

Q.6. Did you hold yourself out to Mr. Ferguson as a partner on any manner?

A. No sir.

Q.7. Did you ever see Mr. Ferguson or write him any letters with reference to the business of H. O. Winborne or H. O. & Co?

A. No sir, I never wrote him a letter in my life.

Q.8. Do you give your husband authority to say directly or indirectly that you were a partner?

A. No sir.

Q.9. Do you owe Mr. Ferguson anything?

A. No sir.

Q.10. To whom does the personal property now held by Mr. Cross and formerly used by H. O. Winborne at Buckhorn belong?

A. To me.

Q.11. Did you sign the note exhibited here in evidence?

A. No sir.

Q.12. Did you know of its existence?

A. No sir, I didn't know anything about it.

Q.13. State what if any connection or interest you had in the firm of H. O. Winborne at Buckhorn?

A. I did not have any.

CROSS EXAMINATION BY MR. CORBITT.

Q.14. Mrs. Winborne, were you present at a trial of a suit brought by H. O. Winborne & Co. against John L. Gay at Winton N. C?

A. No sir I was not.

Q.15. There was such a suit there was there not?

A. Yes sir.

Q.16. Have you authorized your husband to tend to your affairs for y u?

A. Yes sir.

Q.17. Whatever he says to you would authorize him to do, you will agree it to be true be willing to swear by it?

A. Yes sir, but I would use my own judgment about it.

Q.18. If your husband were to say that you had authorized him to make a certain transaction which he made in your name, wouldnt you consider it binding for you?

A. Not unless I had told him so.

Q.19. You wouldnt consider his statement that you had told him so binding on you to stand by what he had done?

A. No sir, I would expect him to ask me about it first.

Further the deponent sayeth not.

Signature waived by consent.

The witness, H. O. Winborne, being first duly sworn deposes and says:

Q.1. What is your name, age, residence and occupation, and are you a party to this suit?

A. H. O. Winborne, 24, Buckhorn, farming, yes I am a party to this suit.

Q.2. Were you in business at Buckhorn, and did you buy goods from W. B. Ferguson & Co?

A. yes sir.

Q.3. When were you in business at Buckhorn?

A. From the middle of January to ~~some~~ time in July 1902.

Q.4. Who were your partners at Buckhorn?

A. I didn't have any.

Q.5. Under what firm name was the business run?

A. H. O. Winborne.

Q.6. Were these your licenses procured from the state?

A. Yes sir.

Two licenses here produced marked XX.

Q.7. These licenses appear to have been gotten out on May 1, 1902 and to expire April 30, 1903. Were you not in Business before May 1, 1902?

A. Yes sir.

Q.8. Have you the licenses before May 1, 1902?

A. Yes sir.

Q.9. Can you exhibit them?

A. Yes sir.

Licenses here exhibited marked XXX.

License permitted to be filed by consent of counsel hereafter.

Q.10. Did you have licenses for other business than as a merchant and for tobacco?

A. Yes sir, liquor license.

Q.11. In whose name did you apply for these license?

A. H. O. Winborne.

Q.12. Who run the business at Buckhorn?

A. H. O. Winborne.

Q.13. Did either A. E. Winborne or J. R. Winborne have any interest in this business?

A. No sir.

Q.14. Did either of them have any management of the business?

A. No sir.

Q.15. Did either of them buy any goods for the business?

A. No sir.

Q.16. Have you any interest in the property standing in the name of A. E. Winborne situated in Nansemond County?

A. No sir.

Q.17. At the time of your petition in bankruptcy did you owe W. B. Ferguson & Co?

A. Yes sir.

Q.18. Was this debt by open account or by note?

A. By both I think.

Q.19. Do you recall for what amount the note was?

A.. I don't remember right now.

Q.20. Witness here shown note introduced in testimony for \$366.05.

A. Yes sir.

Q.21. This note is signed H. O. Winborne & Co. for whose debt was it given?

A. H. O. Winborne.

Q.22. Why was it signed H. O. Winborne & Co?

A. Mr. Ferguson says to me sign this note H. O. Winborne & Co. I signed it H. O. Winborne he says put Co. to it I said to him there id no Co. to this firm well he says there is no Co. to mine, but if you sign Co. to it, it will sound stronger and I told him there is no business in that, signing Co. to a business of that kind unless there is one and he kept on insisting that I sign Co. to it saying that the bank wouldn't take it otherwise until I signed it.

Q.23. Did you set forth this note as a debt of H. O. Winborn in a schedule in your petition in bankruptcy?

QA. Yes sir.

Q.24. How, prior or before this note was made, did Mr. Ferguson send your bills, in the name of H. O. Winborne or H. O. Winborne & Co?

A. Some of the bills were marked H. O. Winborne & Co. but he xsent the goods in the name of H. O. Winborne.

Q.25. When you began business in Buckhorn, did you come to Suffolk to buy goods of Ferguson & Co. and if so who came with you?

A. I dont remember whether any one was with me or not.

Q.26. Was not your father J. R. Winborne with you?

A. Yes sir, I think he was.

Q.27. Do you recall with whom you made your arrangements to buy goods from Ferguson & Co?

A. Mr. Will Cross.

Q.28. Do you remember seeing Mr. Ferguson in the store that day?

A. I can't say whether I saw him or not.

Q.29. I understand that you went to Norfolk after you had been in Ferguson's place is that correct?

A. Yes sir.

Q.30. Did you come back to Suffolk afterwards?

A. Yes sir.

Q.31. Did you go to Ferguson's store after you came back from Norfolk?

A. I don't remember whether I did or not.

Q.32. Did you and your father have any conversation with Mr. Ferguson about the purchase of goods and were you not together?

A. I don't remember whether we saw Mr. Ferguson or not I don't think we did.

Q.33. If Mr. Ferguson states that he had a conversation with you and your father when you first came to purchase goods of him and your father states that the business at Buckhorn was owned and run by the same people who had before that time owned the business at Tunis under the firm name of H. O. Winborne & Co. what have you to say?

A. He didn't tell him so in my presence and I don't think he ever told him so.

Q.34. Are you positive that no such conversation occurred in your presence?

A. Yes sir.

Q.35. As I understand your testimony you say that your father was with you when you bought goods of Ferguson and that you bought from Mr. Cross and made your arrangements with him for credit and that you do not remember whether or not you even saw Mr. Ferguson that day, is that correct?

A. Yes sir.

CROSS EXAMINATION BY MR. CORBITT:

Q.36. When id you fail in business at Buckhorn?

A. In July 1902.

Q.37. What time in July?

A. I don't know, about the 23 I think.

Q.38. When was it you went into bankruptcy?

A. That is what I meant.

Q.39. You testified that you signed this note for \$366.05?

A. Yes sir.

Q.40. Why was it you signed H. O. Winborne & Co?

A. Mr. Ferguson told me that it would make the firm stronger if I would sign it Co., he said there wasn't any Co. to his business but he signed Co. so as to make it stronger he said he didnt know whether the bank would take it without signing Co. or not, I told him there wasn't any business about signing Co. to H. O. Winborne, when there wasn't any Co. to it, and he said there wouldn't be any trouble about it and he would rather I would sign Co. because he was afraid the bank would not take it and he kept insisting on it until I signed it.

The witness, Mrs. A. E. Winborne, being first duly sworn  
deposes and says:

Q.1. Mrs. Winborne it has been stated by John L. Gay that you told him that J. R. Winborn, A. E. Winborne and H. O. Winborne were partners at Tunis under the firm name of H. O. Winborne & Co., is that true?

A. No sir.

Q.2. Gay also states that you told him that H. O. Winborne was a member of the firm of A. E. Winborne & Co., was there ever such a name as A. E. Winborne & Co?

A. No sir.

Q.3. Mr. John L. Gay also states that you told him that H. O. Winborne had opened a business at Buckhorn and that you and your husband were partners with him there. What have you to say about that.

A. I never told Mr. Gay anything of the kind.

Q.4. Mr. Gay states that just before or just after Christmas 1901 before the trial at Winton that you came out of the store of H. O. Winborne & Co., at Tunis, and stopped him in the road in front of the store and told him that you needed money and had to have it as your husband and H. O. Winborne were running business at Buckhorn and needed money to pay the bills. Please state what you know about this.

A. I never mentioned such a thing to Mr. Gay in my life.

Q.5. Are you such conversation occurred?

A. I certainly am.

Q.6. What goods, if any, were shipped from the Tunis store in January or February 1902 to Buckhorn?

A. Some store fixtures that I let Holly have and some overalls that is all that I know of.

Cross examination waived.

Signature waived.

H. O. Winborne being duly sworn again deposes and says as follows:

DIRECT EXAMINATION BY MR. WITHERS.

Q.-Mr. Ferguson in his testimony states that when you and your father came to buy the first bill of goods from him that he took you in the sample room adjoining his office and had a conference regarding the account for the Buckhorn store and that you and your father then stated to him that H. O. Winborne & Company had decided to open a store at Buckhorn, Virginia. Please state what you may know about this.

A.- When I bought the first bill of goods I came to Suffolk and my father came with me I did not know whether he was coming to Suffolk or intended to go to Norfolk, I do not remember whether he went the same day or went the next day. Anyway we went to Norfolk on that trip. We stopped in Mr. Ferguson's and Mr. Ferguson was not in, Mr. Cross was in and he asked us if there was anything he could do for us, I told him that I had stopped business at Tunis had sold out and was going to do business at Buckhorn and told him we needed some goods and he said he just as well trust me at Buckhorn as to trust me at Tunis. I told him that I was going to do business at Buckhorn as H. O. Winborne and he said Mr. Ferguson was not in but he felt sure it would be alright he could trust me at Buckhorn as well as at Tunis.

So much of the above answer as repeats the statement made by Mr. Cross is excepted to as irrelevant and improper evidence.

Q.- Mr. Ferguson states that he took you and your father in the sample room adjoining his office and had a conference about the account to the Buckhorn store, do you remember anything about this?

A.- He was not in town so Mr. Cross said.

Q.- Then I understand that you made all arrangements about credit with Mr. Cross, is that correct?

A.- Yes sir, on that day.

Q.- Did you give Mr. Ferguson more than one note?

A. Yes sir.

Q.- How were the first notes given by you signed?

A. A.- H. O. Winborne.

Q.- Can you file any of these notes?

A. Yes sir.

-----Notes here filed marked exhibit 5-----

Q.- Did Mr. J. R. Winborne after this first visit buy any goods for you from Ferguson?

A.- Yes sir, it seems to me he bought some goods for me on Monday morning but as to who he bought them from I do not remember I asked him if he would buy them for me as it would save me a trip down here.

Q.- Is the occasion of which you speak the one when you requested your father to stop in Mr. Ferguson's and ask if he had received an order, I think it was for sugar, and if so hurry it up?

A.- Yes sir, I had ordered it a day or two before and it had not come so I asked him to stop in there and tell him to ship it.

Q.- Mr. Ferguson has filed a letter from your father to you in which your father says that he had shipped you certain goods from Tunis, gave you some advise about extending credit and paying your bills. Please explain what goods this letter refers to, why they were shipped to you and what the letter means.

A.- When I first opened business at Buckhorn I did not have any fixtures we had been running two stores at Tunis to the convenience of Mr. Gay, and when I went to Buckhorn I borrowed some fixtures we had at one place from my mother. In shipping them he had to send me a bill so I could check them up and to know if anything was lost. I do not remember what was on the bill I know that there were a lot of overalls he had more than he specially needed so he shipped me I do not remember the dozens of pairs and I gave him credit for the overalls and the rest of the things were borrowed.

Q.- Mr. F. A. Holladay states that on one occasion you came into his store in Suffolk and asked for credit for a bill of goods, that he asked if it was the same concern as H. O. Winborne & Company at Tunis and that you said I am H.O. Winborne at Tunis and want goods shipped to the same concern at Buckhorn. Please state what you remember of this conversation?

A.- I was in Mr. Holladay's office and asked him if he would ship me some feed and he asked me if I wanted it shipped to H. O. Winborne & Company at Tunis, I told him no that I was not doing business at Tunis at all but that I was doing business at Buckhorn as H. O. Winborne and he said well if that was the H. O. Winborne that was at Tunis that he had just as soon ship goods to me at Buckhorn as to Tunis. He asked me if it was H. O. Winborne & Company and I told him no that I had sold out at Tunis and was doing business at Buckhorn as H. O. Winborne and he said very well he would ship them. I do not remember the bill but I think it was something like \$30.00.

Q.- Is Mrs. Sallie A. Butler any kin to you and are you in any way a member of her family?

A.- No sir.

CROSS EXAMINATION BY MR. McLEMORE.

Q.- When did you retire from the firm at Tunis?

A.- It was December 1901 I think.

Q.- When did you begin business at Buckhorn?

A.- Sometime during January, 1902.

Q.- How many firm names did you do business under at Tunis?

A.- Only one name, H. O. Winborne & Company.

Q.- Who constituted that firm?

A.- My father and I.

Q.- Was your mother ever a partner with you or your father?

A.- No sir.

Q.- Did she ever conduct any business there in her own name?

A.- Yes sir.

Q.- When was that?

A.- That was I do not remember what year but I think it was in 1900.

Q.- Do you know how the goods shipped to you at Buckhorn by Ferguson were billed and charged?

A.- They were billed not more than three or four to H. O. Winborne & Co,pany and all the rest H. O. Winborne.

Q.- Do you know why they changed the bill?

A.- Yes sir.

Q.- Do you know how thw goods bought from Holladay Brothers were billed?

A.- I do not know I cannot say positively H. O? Winborne. I asked Mr. Ferguson to change the bills and ship to H. O. Winborne and not to any Company.

Q.- You spoke just now of certain goods shipped to you from Tunis for which you credited your father, upon what did you credit your father?

A.- I credited his account with it with what he owed me on the stock of goods I had sold him.

Q.- Did you have a regular account on your books with your father?

A.- I had one half interest in the stock at Tunisia and I sold him my interest I owed him for board and of course he owed me for my part of the stock of goods I do not remember how it was fixed now but he shipped ~~he~~ his goods as part payment.

Q.- Then ydo you remember upon what you credited your father when these goods were shipped to you?

A.- I credited his account on my books.

Q.- How was that account which you had against him and which showed him to be indebted to you ever paid?

A.- Well I was indebted to him at the same time, I was up there in January 1902 and I think we fixed up our business then.

Q.- Do you mean in January 1902 you fixed up your differences between you and included in this settlement the goods which he had shipped you at Tunis?

A.- Yes sir.

Q.- Have you got this book in which your account was kept?

A. It did not take but a very small piece of paper to keep that on. I think it was a leaf out of a day book, I think I can present it. I think I can produce it.

Q.- I would thank you to produce this book?

A.- It is not in a book now.

Q.- Where is it now?

A.- It is in a pocket book at Drym Hill.

Q.- In whose pocket book?

A. Mine.

Q.- Why have you kept this account in a pocket book for these two or three years?

A. It was with some of my other papers and I have never taken it out and destroyed it.

Q.- Then you have it with other papers in your pocket book?

A.- Yes sir if it has not been destroyed since I left it there.

Q.- When did you last see this account?

A. It has been something like a year ago.

Q.- You say you have it there if it has not been destroyed since you last saw it, who has charge of your pocket book?

A. ~~My mother~~ My mother?

Q.- Has she any authority to destroy your papers?

A. None at all.

Q.- Did you keep any books at your store at Buckhorn, this account was kept in the book as any other, was it?

A. It was not kept in the book that was at Buckhorn, but was kept by me at Buckhorn.

Q.- How much on this account showed that your father owed you when you left Tunis?

A. I do not remember now.

Q.- Can you give me an idea?

A. No sir.

Q.- Was it as much as a hundred dollars?

A. No sir.

Q.- Was it as much as fifty dollars?

A. I could not say positively.

Q.- When you and your father had the settlement, who was in debt to the other?

A. I do not remember exactly now I think I was in debt to him some.

Q.- Did you have a settlement and passed receipts when you had your settlement?

Yes sir, I think so.

Q.- Did this statement have upon it an item embracing the goods shipped from Tunis by your father?

A. It did.

Q.- And this is the statement which you have kept, is it?

A. I cannot say positively that it is the one, I have one or two.

Q.- About what did the over-alls shipped you amount to?

A. I do not remember.

Q.- About how many pairs were shipped you?

A. I havent any idea.

Q.- How were they shipped?

A. In a box.

Q.- By what route?

A.- They were shipped on the Norfolk & Carolina to Suffolk and then transferred to the Seaboard, I suppose that was the way they came I do not think they carried them to Norfolk.

Q.- Did they not come by Franklin?

A.- I cannot say positively Mr. McClenny can state that I do not remember. It is very probable that they did as it is about as quick one way as the other. I think since you mentioned it they did come by Franklin.

Q.- When you sold out at Tunis to your father did you not give any notice to the public that you had sold out?

A.- No sir I did not publish it in the paper, when I bought the first goods from W. B. Ferguson & Company I bought them of Mr. Will Cross who was working for them at that time and he told him that I had sold out at Tunis and was going in business at Buckhorn as H. O. Winborne I also told Norfolk & Brother when I bought goods of them when I was in Norfolk I bought dry goods from Hirschler and told them the same, that is all the publishing that I did.

Q.- Where are you living now?

A. A. Near Buckhorn.

Q.- When were you last at Drum Hill?

A. In July, I think.

Q.- Did you see your papers that you have referred to at that time?

A. No sir.

Q.- Will you please kindly file the statement that you said pertaining to settlement between you and your father and which is at this moment in your pocket book at Drum Hill with the notary?

Q/-- I understood you to say it was there now I could not swear that that was there. I told you before I could not say it was there I left it there but I cannot say it is there now.

Q.- I think you said that you left it in your pocket book did you not?

A. Yes sir.

Q.- Then it is there now in your pocket book unless your mother has destroyed it, is it not?

A.- No sir there are others who could destroy it.

Q.- Unless somebody has destroyed it it is there not?

A.- Unless something has destroyed it.

Q.- Who has access to your pocket book at Drum Hill?

A. I gave it to my mother and told her to put it in her trunk that I had some papers I did not care to carry about with me and to put it there for safe keeping.

Q.- Did you tell your mother ~~these~~ these were valuable papers and request her to take care of them for you?

A. I asked her if she would take care of my pocket book that I had some papers in it.

Q.- Do you know anything about the suit which was brought by H. O. Winborne & Company I think against John L. Gay at Tunis?

A. Yes sir.

Q.- What do you know about this suit?

A. Mr. Gay owed H. O. Winborne & Co. an account and would not pay it, we had to sue him for it.

Q.- Who was H. O. Winborne & Company at this time?

A. The business had been running as H. O. Winborne & Company and the bills that were due the Company had not been settled so of course H. O. Winborne & Company had to collect them and I was at Buckhorn at that time and my father had to attend to it. I was H. O. Winborne and my father was the Company.

Q.- Then if I understand you the Company at that time consisted of H. O. Winborne and John R. Winborne?

A. They were but they were not doing business then, the store was not in H. O. Winborne & Company's name. H. O. Winborne & Company were suing for their debts.

Q.- If I understand you the H. O. Winborne & Company who were suing were H. O. Winborne & J. R. Winborne.

A. It was J. R. Winborne suing and of course he had to sue for H. O. Winborne & Company's debt because he had bought out H. O. Winborne & Co. and doing business in his own name.

Q.- Who was doing business in his own name?

A. My father, J. R. Winborne.

Q.- Then at the time this suit was brought was the business at Tunis being conducted under the firm name of J. R. Winborne?

A. Yes sir.

Q.- Who owned the debt due by John L. Gay for which suit was brought?

A. My father.

Q.- But if I understand you correctly the original debt due by Gay at the time the same was contracted was due to you and your father doing business under the name of H. O. Winborne & Company, is this correct?

A. Yes sir.

Q.- Have no further questions.

Further this deponent saith not. Signature waived by consent.

Plaintiff's counsel requests that the original account of statement between H. O. Winborne and J. R. Winborne be filed with these depositions.

*We hereby agree that the foregoing record is such of the record in the cause of Webster v. H. O. Winborne et al. so will enable the appellate court properly to decide the case.*

*Robt. W. Wilkes  
att. for defendant  
McQuone & Co. Att.  
Counsel for plaintiffs.*

VIRGINIA:

I, R. R. Smith, Clerk of the Circuit Court of the County of Nansemond, do certify that the foregoing is a true copy of the record as agreed upon by counsel in this cause, as the same appears in my court.

Given under my hand this 2nd. day of October, 1905.

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Clerk of the Circuit Court of  
Nansemond County.

M. B. Ferguson Obo  
4 3 Copy of Record  
H. O. Winborne vls

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, NANSEMOND COUNTY TOWIT  
2nd. November Rules, 1902.

Angie E. Winborne, et al.

ads. In Chancery.

W.B. Ferguson & Co.

The joint and separate answer of John R. Winborne, Angie E. Winborne and H.O. Winborne, to a bill of complaint filed against them in the Circuit Court of Nansemond County by W.B. Ferguson, trading as W.B. Ferguson & Co.

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

That these respondents were never partners in the business of H.O. Winborne or H.O. Winborne & Co. at Buckhorn Va. That the respondent H.O. Winborne was the sole and only trader at Buckhorn Virginia under the name of H.O. Winborne or H.O. Winborne & Co.; that the true firm name of the said H.O. Winborne was H.O. Winborne and not H.O. Winborne & Co.

These respondents aver that H.O. Winborne alone was indebted to the complainant and that since he became so indebted he has filed his voluntary petition in bankruptcy in the District Court of the United States for the Eastern District of Virginia, praying to be discharged from his debts in accordance with the Act of Congress in such cases made and provided and on the        day of        1902 was duly adjudged a bankrupt.; that in his said petition in bankruptcy the complainant is scheduled as a creditor of the said H.O. Winborne in the amount of \$468.66, and as such creditor is entitled, upon proof of his claim, to share in the assets of the said bankrupt.

The respondents Angie E. Winborne and John R. Winborne are non-residents of the State of Virginia and <sup>Angie E. Winborne, solely,</sup> does in fact own the tract or tracts of land in Nansemond County described in <sup>And John R. Winborne has no interest whatsoever therein,</sup> complainant's bill, but they positively deny that either of

of Angie E. Winborne  
them or ~~the~~ <sup>the</sup> land is liable or responsible for the debts of  
the firm of H.O. Winborne or H.O. Winborne & Co. as alleged in  
said bill; these respondents emphatically deny any intention  
on their part to convey their property or otherwise dispose  
of the same with intent to hinder, delay or defraud their cred-  
itors, and they particularly deny that the complainant is any  
creditor of theirs.

All these respondents deny that there is any ground  
upon which an attachment can or should issue against Angie E.  
Winborne or John R. Winborne or either of them or against their  
property or the property of either of them.

And these respondents deny all fraud, unlawful combina-  
tion and confederacy; and having fully answered the complainan-  
t's bill pray to be hence dismissed with their reasonable  
costs by them in this behalf expended, and they will ever  
pray etc.

*Robt. W. Wickers*

*Robt. W. Wickers*

p.d.

*Angie E. Winborne*

*John R. Winborne*

*H. O. Winborne*

*by Robt. W. Wickers their*  
*attys.*

Defendants.

Virginia; Nansemond County, to-wit:-

This day personally appeared before me,  
a Notary Public in and for the County and State afore  
said, Angie E. Winborne, John R. Winborne and H.O. Winborne, whose  
answer is above written, and made oath that the statements  
contained in the said answer, so far as made of their own know-  
ledge are true; and so far as made from knowledge, or informa-  
tion derived from others, they are believed to be true.

Given under my hand this            day of November, 1902.

My term of office expires on the            day of           , 190

\_\_\_\_\_  
Notary Public.

Circuit Court of Nansemond

Angie E. Kimborne et als  
ads } In Chy.

H. B. Ferguson vs

Answer of Defts

1902 Nov 14th Filed  
APG:mcg:lsk

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.

-----0-----

Your orator, W. B. Ferguson, trading and doing business  
as W. B. Ferguson & Company, respectfully represents to the  
court the following case:

That Angie E. Winborne, H. O. Winborne and J. R. Win-  
borne, merchants and partners doing business as H. O. Winborne  
& Company, were until the last few weeks engaged in the mer-  
cantile business at Buckhorn, in the County of Nansemond; that  
H. O. Winborne is a resident of the County of Nansemond, and  
Angie E. Winborne and J. R. Winborne are non residents of the  
State of Virginia, but have two valuable tracts of land lying  
in the County of Nansemond, near Buckhorn, one of which con-  
tains forty acres, more or less, is known as the "Jethro But-  
ler tract, and bounded by the lands of Jordan Holland's es-  
tate, James Holland and others; the second tract of land is  
adjoining the one above mentioned, containing sixty-one and  
one half acres, and is bounded by the lands of Dempsey Butler  
and Jethro Butler, deceased's tract; which tracts of land  
are worth something like \$1000.00; that the said tracts of  
land are owned by the said Angie E. Winborne and J. R. Win-  
borne.

Your complainant states that the said H. O. Winborne &  
Company are indebted to them in the sum of \$411.58 with inter-  
est from the 1st. day of August, 1902, and that all of said  
indebtedness is due and payable, for goods sold and delivered  
to the said partnership at their special instance and request,  
and that the said H. O. Winborne is hopelessly insolvent, and  
is now in voluntary bankruptcy, and, as your orator is advised,  
will pay a mere pittance of the indebtedness of H. O. Winborne  
& Company.

Your orator would further state that Angie E. Winborne and J. R. Winborne have no personal effects in this State known to him, and verily believes that they are contemplating conveying their property, or otherwise disposing of same, with intent to hinder, delay and defraud their creditors, and that unless an attachment is sued out and duly levied upon, that same will be placed beyond the reach of your orator and other creditors of the said defendant.

Your orator is advised that the said Angie E. Winborne and J. R. Winborne being non-residents of the State of Virginia, he is entitled to an attachment against their effects to the extent of the payment of the indebtedness due him with interest and cost.

In tender consideration whereof, and for as much as your orator is remediless in the premises, save by the aid of a court of equity where matters of this kind are alone and properly cognizable, to the end that justice may be done, your orator prays that the said Angie E. Winborne, H. O. Winborne and J. R. Winborne be made parties defendants to this bill, and required to answer the same, but answers under oath are hereby expressly waived; that your orator's debt may be established against the said defendants with the force and effect of a judgment, and that the attachment on the real estate owned by the said Angie E. Winborne and J. R. Winborne may be declared valid, binding and effective; that the said real estate may be sold and the proceeds applied to the payment of your orator's debt; that all such orders and decrees may be entered, and general and special relief granted, and inquiries and accounts taken, and all such other general and special relief granted as the nature of his case may require or to equity shall seem meet. And notice is hereby given that the court will be asked to allow reasonable attorneys fees to counsel conducting this cause.

And your complainants will ever pray, etc.

*Wm. Fryman & Co*

*McDonnell & Corbett p4.*

State of Virginia  
County of Chancery to wit:

This day personally appeared before me, W.B. Ferguson  
of the firm of W.B. Ferguson & Co and made oath that  
the statements as contained in the foregoing bill of complaint  
are true in so far as made from his own knowledge,  
+ in so far as made upon information derived from others  
he believes them to be true.  
Given under my hand this 15th day of September 1902

Julius A. Brinkley,  
Notary Public.

My term of office  
expires July 28, 1906.

W. B. Ferguson } Bill + E4  
n.  
Angie E. Minhouse  
et al.

---

1902 Sept 16th Filed  
App. Gomeny cK  
W. L. Moore & Corbitt  
P. G.

W B Ferguson & Co

VS In Chancery

Angie E Winborne Tooke

1902 Sept 5th Process issued returnable to  
September rules third Monday

" " " Order of Publication as to  
non residents

" " 15. Process returned executed on  
resident defendants

Bail filed and decree nisi  
against said defendants

" Oct. 6th Decree nisi Confirmed and  
Cause set for hearing as to  
resident defendants.

" " 10th Set for hearing on order  
of publication

Costs-  
Clerk 4.51  
" 4.21  
Tax 1.50  
Shff 1.50  
\$ 11.72

W<sup>m</sup> Ferguson & Co  
Q<sup>y</sup> In Chancery  
A. E. Winborne & Co

1909  
July 16th  
Final Decree

**Circuit Court.**

Tuesday after the Second Monday in  
April and October.

HON. ROBERT R. PRENTIS, Judge.  
AZRA P. GOMER, Clerk.

**County Court.**

Second Monday in each month.

HON. WILBUR J. KILBY, Judge.  
ROBERT R. SMITH, Clerk.  
E. E. HOLLAND, Commonwealth's Attorney.  
ALEX. H. BAKER, Sheriff.  
SYDNEY T. ELLIS, County Treasurer.  
JOHN B. PINNER, Commissioner of Accounts.

**Nansemond County Clerks' Office.**

*Suffolk, Va.,*

*190*

NOTHOD.

**VIRGINIA—IN THE CLERK'S OF-**  
fice of the Circuit Court of Nanse-  
mond county, the 5th day day of Septem-  
ber, 1902:

W. B. Ferguson, trading and doing busi-  
ness as W. B. Ferguson & Company,  
vs. Plaintiff,  
Angie E. Winborne, H. O. Winborne and  
J. R. Winborne..... Defendants.

**IN CHANCERY.**

The object of this suit is to establish a  
debt due by the firm of H. O. Winborne &  
Co. to W. B. Ferguson & Co., amounting to  
\$411 58, with interest from August 1st, 1902,  
with the force and effect of a judgment, and  
to establish the fact that Angie E. Win-  
borne, H. O. Winborne and J. R. Winborne  
were, at the time the indebtedness afore-  
said was contracted, members of the firm  
of H. O. Winborne & Co., and also to sub-  
ject the real estate of Angie E. Winborne,  
lying in the county of Nansemond, Vir-  
ginia, and any other property of the de-  
fendants, to the payment of the said in-  
debtedness of \$411 58 and interest.

And affidavit having been made and filed  
that Angie E. Winborne and J. R. Win-  
borne are non-residents of the State of  
Virginia, the said Angie E. Winborne and  
J. R. Winborne are required to appear,  
within fifteen days after due publication  
of this order, in the Clerk's office of the  
said court, at rules to be holden therefor,  
and do what is necessary to protect their  
interest. And it is ordered that a copy of  
this order be forthwith published once a  
week for four successive weeks in the **SUF-**  
**FOLK HERALD**, a newspaper published in  
the town of Suffolk, Nansemond county,  
Virginia, and posted as the law directs.

A copy—Teste: A. P. GOMER,  
September 5, 1902. Clerk.  
MCLEMORE & CORBITT, p. q. se12 4t

*I A P Gomer Clerk of the Circuit Court of Nansemond  
County do hereby Certify that a Copy of the above order of  
publication was posted at the Court house door of  
Nansemond County on Monday the 8th day of September  
1902 it being the first day of the September Term of the  
County Court of said County.*

*A. P. Gomer Clerk*

**Circuit Court.**

Tuesday after the Second Monday in  
April and October.

HON. ROBERT R. PRENTIS, Judge.  
AZRA P. GOMER, Clerk.

**County Court.**

Second Monday in each month.

HON. WILBUR J. KILBY, Judge.  
ROBERT R. SMITH, Clerk.  
E. E. HOLLAND, Commonwealth's Attorney.  
ALEX. H. BAKER, Sheriff  
SYDNEY T. ELLIS, County Treasurer.  
JOHN B. PINNER, Commissioner of Accounts.

**Nansemond County Clerks' Office.**

Suffolk, Va., ..... 190.....

**VIRGINIA—IN THE CLERK'S OF-  
fice of the Circuit Court of Nanse-  
mond county, the 14th day of October, 1902:**

W. B. Ferguson, trading and doing busi-  
ness as W. B. Ferguson & Company,  
vs. Plaintiff,  
Angie E. Winborne, H. O. Winborne and  
J. R. Winborne..... Defendants.

**IN CHANCERY.**

The object of this suit is to establish a  
debt due by the firm of H. O. Winborne &  
Co. to W. B. Ferguson & Co., amounting to  
\$411.58, with interest from August 1st, 1902,  
with the force and effect of a judgment,  
and to establish the fact that Angie E. Win-  
borne, H. O. Winborne and J. R. Winborne  
were, at the time the indebtedness afore-  
said was contracted, members of the firm  
of H. O. Winborne & Co., and also to sub-  
ject the real estate of Angie E. Winborne  
lying in the county of Nansemond, Vir-  
ginia, and any other property of the de-  
fendants, to the payment of the said in-  
debtedness of \$411.58 and interest.

And affidavit having been made and filed  
that Angie E. Winborne and J. R. Win-  
borne are non-residents of the State of  
Virginia, the said Angie E. Winborne and  
J. R. Winborne are required to appear,  
within fifteen days after due publication  
of this order, in the Clerk's office of the  
said court, at rules to be holden therefor,  
and do what is necessary to protect their  
interest. And it is ordered that a copy of  
this order be forthwith published once a  
week for four successive weeks in the **SUF-  
FOLK HERALD**, a newspaper published in  
the town of Suffolk, Nansemond county,  
Virginia, and posted as the law directs.

A copy—Teste: A. P. GOMER,  
October 14, 1902. Clerk.  
McLEMORE & CORBITT, p. q. oc17-4t

I A P Gomer clerk of the Circuit Court of Nansemond  
County do hereby certify that the above order of publication  
was posted at the front door of the Courthouse of Nansemond  
County on Monday the 10th day of November 1902 it being the first

Non-Court day of the County Court Term thereof  
D. W.

A. P. Gomer clerk

*Order of Publication*

VIRGINIA:

In the Clerk's Office of the Circuit Court of Nansemond County, the 14th. day of October, 1902.

W. B. Ferguson, trading and doing business as W. B. Ferguson & Company-----Plaintiffs

vs. IN CHANCERY

Angie E. Winborne, H. O. Winborne and J. R. Winborne-----Defendants.

The object of this suit is to establish a debt due by the firm of H. O. Winborne & Company to W. B. Ferguson & Company amounting to \$411.58 with interest from August 1st., 1902, with the force and effect of a judgment, and to establish the fact that Angie E. Winborne, H. O. Winborne and J. R. Winborne were, at the time the indebtedness aforesaid was contracted, members of the firm of H. O. Winborne & Company, and also to subject the real estate of Angie E. Winborne, lying in the county of Nansemond, Virginia, and any other property of the defendants, to the payment of the said indebtedness of \$411.58 and interest.

And affidavit having been made and filed that Angie E. Winborne and J. R. Winborne are non residents of the State of Virginia, the said Angie E. Winborne and J. R. Winborne are required to appear, within fifteen days after due publication of this order, in the Clerk's Office of the said Court, at rules to be holden therefor, and do what is necessary to protect their interest, and it is ordered that a copy of this order be forthwith published once a week for four successive weeks in THE SUFFOLK HERALD, a newspaper published in the Town of Suffolk, Nansemond County, Virginia, and posted as the law directs.

A Copy--Teste:

A. P. Gomer, C.C.

October 14th., 1902.

VIRGINIA:

In the Clerk's Office of the Circuit Court of Nansemond County, the 5th. day of September, 1902.

W. B. Ferguson, trading and doing business as W. B. Ferguson & Company-----Plaintiffs.

vs. } *In Chancery.*

Angie E. Winborne, H. O. Winborne and J. R. Winborne-----Defendants.

The object of this suit is to establish a debt due by the firm of H. O. Winborne & Co. to W. B. Ferguson & Co. amounting to \$411.58 with interest from August 1st., 1902, with the force and effect of a judgment, and to establish the fact that Angie E. Winborne, H. O. Winborne and J. R. Winborne were, at the time the indebtedness aforesaid was contracted, members of the firm of H. O. Winborne & Co., and also to subject the real estate of Angie E. Winborne, lying in the county of Nansemond, Virginia, and any other property of the defendants, to the payment of the said indebtedness of \$411.58 and interest.

And affidavit having been made and filed that Angie E. Winborne and J. R. Winborne are non residents of the State of Virginia, the said Angie E. Winborne and J. R. Winborne are required to appear, within fifteen days after due publication of this order, in the Clerk's Office of the said court at rules to be holden therefor, and do what is necessary to protect their interest, and it is ordered that a copy of this order be forthwith published once a week for four successive weeks in THE SUFFOLK HERALD, a newspaper published in the Town of Suffolk, Nansemond County, Virginia, and posted as the law directs.

A Copy—Teste:

A. P. Gomer, C.C.

September 5th., 1902.

McLEMORE & CORBITT, p.q.

Ferguson Geo  
Esq Chancery  
Winborne tocher

Order of  
Publication

Printed at the Court House, London

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON

*Angie E Winborne*  
*N A Winborne and J R Winborne*

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 *September 1902*, to answer

*a* Bill in Chancery, exhibited against *them*

in the said Court by *W B Ferguson Trading and*  
*doing business as W B Ferguson & Co*

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *5th* day of  
*September*, 1902, in the 127<sup>th</sup> year of the Commonwealth.

A copy—Teste:

Teste:

*A P Gomer*, CLERK.

*A P Gomer*, CLERK.

*McLemore Heoritt* p. q.

*Angie E Winborne*

vs.

In Chancery.

*Sept 6 1902*  
*found in my account*  
*for the same day*

1902

*September* Rules.

*Third* Monday.

Nansemond Circuit Court

Process Book No. *2*

Page *232*

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON

*Angie C. Winborne*  
*H. C. Winborne and J. R. Winborne*

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 *September 1902*, to answer

*a* Bill in Chancery, exhibited against *them*  
in the said Court by *W. B. Ferguson Trading and*  
*doing business in the as W. B. Ferguson*  
*& Co.*

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *5th* day of  
*September*, 1902, in the 127<sup>th</sup> year of the Commonwealth.

A copy—Teste:

\_\_\_\_\_, CLERK.

Teste:

*A. P. Gomer*, CLERK.

Wm Lemore Horbitt p. q.

W B Ferguson & Co

vs

In Chancery.

Angie Ellinbone and  
Others

1902

September Rules.

Third Monday.

Nansemond Circuit Court.

Process Book No. 2

Page 232

Executed this 14th day of Sept-1902. At Wminkboro not being  
found at his usual place of abode. I delivered a true copy  
of the within summons to Mrs Sally A Butler a female over  
the age of 16 years whom I found true the charge, and explained to  
her the purpose of the same. Angie E Winkboro and Wminkboro  
were found in my County.

J. H. DeBary Deputy  
for C. H. B. B. B. B.

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON

*Angie E Winborne*  
*N Allinborne and J R Winborne*

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 *September 1902*, to answer

*a* Bill in Chancery, exhibited against *them*

in the said Court by *W B Ferguson trading and*  
*doing business as W B Ferguson & Co*

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *5th* day of  
*September*, 1902, in the 127<sup>th</sup> year of the Commonwealth.

A copy—Teste:

*A P Gomer*, CLERK.

Teste:

*A P Gomer*, CLERK.

*McLemore Corbett* p. q.

*J R Winborne*

vs.

In Chancery.

*Sept 1892*  
*Filed for record in N. C. Circuit Court*  
*at Raleigh N. C.*  
*per H. B. Baker, Clerk*

*1902*

*September* Rules.

*Third* Monday.

Nansemond Circuit Court.

Process Book No. *21*

Page *232*

MEMORANDUM OF LIS PENDENS.

All persons take notice: that suit in chancery has been instituted in the Circuit Court of the County of Nansemond, entitled

W. B. Ferguson, trading as W. B. Ferguson & Company

v.

Angie E. Winborne, H. O. Winborne and  
J. R. Winborne

and an attachment in equity has been sued out ~~from~~ the Clerk's Office of the Circuit Court of said county against the property and effects of the defendants; the object of said suit being to recover four hundred and eleven and 58/100 (\$411.58) dollars, claimed to be due to the plaintiffs in this cause by the said defendants. The land intended to be affected by the proceedings is standing in the name of Angie E. Winborne, and was purchased by her from Talbot H. Harrison and wife by deed dated January 28th., 1885, and recorded in D.B.No.14, page 173, and lies in the county of Nansemond, and described as follows:

1st. A tract containing forty (40) acres, more or less, known as the "Jethro Butler" place, bounded by the lands of Jordan Holland's estate, James Hollam and others.

2nd. A certain other tract of land in the said county of Nansemond containing sixty-one and one half (61 1/2) acres, bounded by the lands of Dempsey Butler and Jethro Butler, deceased's estate: it being the tract of land upon which the defendants Angie Winborne and J. R. Winborne resided until they moved to the State of North Carolina.

Witness the following signatures, this 5th. day of September, 1902.

W. B. Ferguson & Co.  
By Jas. L. DeSimore, their  
Attorney

Wigwag:

In the Clerk's Office of Hanson and  
County Court the 5th day of September  
1902: This memorandum of his pendens was  
presented, and thereupon admitted to record.

Teste: R. R. Smith Clerk  
By J. M. Lawrence Atty.

70

W. B. Ferguson & Co.

vs } Lis Pendens

Angie E. Winborne  
and others

---

Admitted to record  
September 5, 1902.

---

Recorded in Deed Book  
No. 53, page 504

1905 June 24th  
Examined & Verified  
A. P. Gomer, Ck

Fee \$1.25

Dec. 20th, 1904.

Mrs. A. E. Winborne,  
Drum Hill, N. C.

Dear Madam:-

Replying to your postal of the 10th inst. I have just returned from Canada hence the delay in answering it. I do not think it is necessary to take any more testimony for our side, I think we have enough. Of course I cannot tell what view the court will take <sup>but</sup> I feel sure that our evidence is ample.  
^

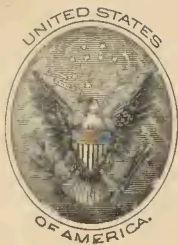
Yours very truly,

Drum Bill no 19-10-04

Dear Sir

Please let me know if it  
is necessary for me to come to  
have my deposition taken & if  
so what day can you take it  
please let me know & oblige

Yours Truly H. E. Winborne



THE SPACE ABOVE IS RESERVED FOR POSTMARK.

# POSTAL CARD.

THE SPACE BELOW IS FOR THE ADDRESS ONLY.

Mr R. W. Withers  
Suffolk Va

Know All Men by These Presents, That we, *W B Ferguson*  
*Trading as W B Ferguson & Co principal and The*  
*United States Fidelity and Guaranty Co Surety by*  
*Richard L Woodward its attorney in fact*

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of

*Two hundred and fifty* 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 \_\_\_\_\_ day of \_\_\_\_\_ in the year  
~~of our Lord one thousand nine hundred and~~ \_\_\_\_\_, and in the \_\_\_\_\_ year of  
the Commonwealth.

In Testimony Whereof, the said *W B Ferguson & Co* has  
hereto set his hand and seal, and the said *The United States Fidelity*  
*& Guaranty Company*

has caused its corporate name to be hereto signed, and its  
*By Richard L Woodward its duly authorized attorney in fact*  
corporate seal to be hereto affixed, this *27th* day of *July*

in the year of our  
Lord, one thousand nine hundred and *five*, and in the *130th* year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That ~~if the above bound~~ *whereas*  
*W B Ferguson trading as W B Ferguson & Co desires to obtain from*  
*the Supreme Court of Appeals of Virginia an appeal from a*  
*decree pronounced by the Circuit Court of Nansemond County*  
*on the 13th day of July 1905 in a Suit in Chancery in which*  
*Said W B Ferguson & Co are Complainants and Angie E Win-*  
*borne N O Winborne and J M Winborne are defendants for causes of error*  
*there appearing and to be corrected as it is said. It was ordered by said*  
*Court that execution to said judgment be suspended for ninety*  
*days from date of said order, when said Complainant or some*  
*one for him should give bond before the clerk of said Court*  
*with security deemed sufficient by ~~him~~ said clerk in the*  
*penalty of Two hundred and fifty dollars payable to the*  
*Commonwealth of Virginia with Condition to perform and*  
*satisfy the said decree in case the same should be affirmed or*  
*said appeal or writ of error be dismissed, and also to pay all*  
*damages costs and fees which may be awarded against or incurred*  
*by said defendants in said Supreme Court of Appeals and all*  
*actual damages incurred in consequence of said appeal*  
*then the above obligation is to be void or else to remain in*  
*full force and virtue.*

SEAL

SEAL

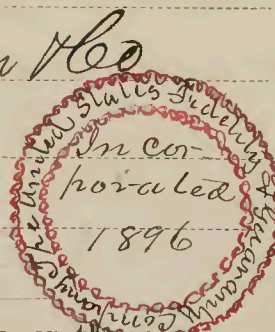
SEAL

SEAL

SEAL

VIRGINIA:

*W B Ferguson & Co*  
*The United States*  
*Fidelity and Guaranty Co*  
*By Richard L Woodward*  
*its atty in fact*



In the Clerk's Office of the Circuit Court of Nansemond County, on the \_\_\_\_\_ day  
*of 27th day of July*, 190*5*:

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

Attest: *Copy Teste: J L Gomez & Co*  
Teste: *J L Gomez & Co*

W B Ferguson & Co  
To Suspending  
Bond  
The Commonwealth.

1905  
July 27th

Recorded in  
Official Bond  
Book No. 1. Page 436.

A copy

declined to have  
recd made.

The Commonwealth of Virginia,

To the *Sheriff* of the *County* of *Wansemond* Greeting:

WHEREAS *W B Ferguson trading & doing business*

*as W B Ferguson & Co has*

instituted in our *Circuit* Court of the *County* of *Wansemond*, a certain action ~~of~~ against

*Angie E Winborne & A Winborne & J R Winborne*

which action is now pending in the said Court: And there having been filed in the Clerk's Office of our said Court an affidavit that the claim of said plaintiff asserted in the said suit is believed to be just, that the affiant believes the plaintiff *is* entitled to or ought to recover *\$411.30* at the least, with interest thereon to be computed after the rate of six per centum per annum from the *1st* day of *August* 1902, till payment, and that to the best of the said affiant's belief the said defendant \$

1. ~~a foreign corporation, or~~ *are* not a resident of this State, and have estate of debts owing to said defendants within the *County* of *Wansemond* in which the action is, ~~or~~ *are* ~~sued~~ sued with a defendant residing therein:

2. ~~removing, or about to remove out of this State, with intent to change~~ domicile:

3. ~~removing, or intend to remove, or ha~~ removed

~~own estate, or the proceeds of the sale of~~ property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;

4. *are* converting, or ~~are~~ about to convert, or have converted *their* property, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud *their* creditors;

5. Have assigned or disposed of, or ~~are~~ about to assign or dispose of, *their* estate, or some part thereof, with intent to hinder, delay or defraud *their* creditors;

Therefore we command you, that you attach the estate of the said *Angie E Winborne & J R Winborne* for the amount of the said *Four Hundred & Eleven & 30/100 Dollars*, with interest thereon, as aforesaid, and the costs, and that you secure such estate so attached in your hands, or so provide that the same may be forthcoming and liable to further proceedings thereupon to be had before our said Court, on the *1st* day of the next *April* term thereof, <sup>1903</sup> and that you make return hereof at the rules to be held in Clerk's office of our said Court, on the ~~Monday~~ in ~~next~~ next (or to the said Court on the first day of the next term thereof) how you have executed the same. And have then there this writ

Witness, *A P Gomer* Clerk of our said Court, at the court-house this *4th* day of *November*, 1902, in the *127* year of the Commonwealth.

*A copy*

*Teste:*

*A P Gomer clerk*

*A P Gomer clerk*

The Plaintiff designates *W S Cross of Wanssmond*  
*County Virginia*

as being in possession of effects of, or being indebted to the defendant.

*Angie E Winborne*

*A copy*

*Teste:*

*A. G. Somers clerk*

*W B Ferguson & Co*  
*by M Lemoire Horbitt*  
*their Attorneys*

Form No. 243.

*J. K. Winborne*

vs.

ATTACHMENT

To

term, 190

p. q.

The Commonwealth of Virginia,

To the Sheriff of the County of Nansemond Greeting:

WHEREAS *W B Ferguson trading & doing business as*  
*W B Ferguson & Co* has

instituted in our *Circuit* Court of the *County* of *Nansemond*, a certain action ~~of~~ against

*Angie E Winborne N O Winborne & J R Winborne*

which action is now pending in the said Court: And there having been filed in the Clerk's Office of our said Court an affidavit that the claim of said plaintiff asserted in the said suit is believed to be just, that the affiant believes the plaintiff *is* entitled to or ought to recover *\$411.58*

at the least, with interest thereon to be computed after the rate of six per centum per annum from the *1st* day of *August* 1902, till payment, and that to the best of the said affiant's belief the said defendant *S*

1. ~~a foreign corporation, or are~~ not a resident of this State, and have estate of debts owing to said defendant *S* within the *County* of *Nansemond* in which the action is, ~~or~~ *I are* sued with a defendant residing therein:

2. ~~removing, or about to remove out of this State, with intent to change~~ domicile:

3. ~~removing, or intend to remove, or have removed~~

~~own estate, or the proceeds of the sale of property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;~~

4. *are* converting, or *are* about to convert, or have converted *their* property, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud *their* creditors;

5. Have assigned or disposed of, or *are* about to assign or dispose of, *their* estate, or some part thereof, with intent to hinder, delay or defraud *their* creditors:

Therefore we command you, that you attach the estate of the said *Angie E Winborne & J R Winborne* for the amount of the said *Four Hundred & Eleven & 5/100 Dollars*, with interest thereon, as aforesaid, and the costs, and that you secure such estate so attached in your hands, or so provide that the same may be forthcoming and liable to further proceedings thereupon to be had before our said Court, on the *1st* day of the next *April* term thereof, <sup>1903</sup> and that you make return hereof ~~at the rules to be held in Clerk's office of our said Court, on the~~ *Monday* in next ~~(or to the said Court on the first day of the next term thereof)~~ how you have executed the same. And have then there this writ

Witness, *A O Garner* Clerk of our said Court, at the court-house this *4th* day of *November*, 1902, in the *12th* year of the Commonwealth.

*A copy*  
*Sub:*

*A O Garner clerk*

*A O Garner clerk*

The Plaintiff designate. *\$ 10 S Cross of Nansemond*  
*County Virginia*

as being in possession of effects of, or being indebted to the defendant.

*Angie E Winborne*

*At copy*

*Teste:*

*A. J. Somers clerk*

*W B Ferguson & Co*  
*by M Lemore Corbett*

*their attorneys*

Form No. 213.

*Angie E Winborne*

vs.

}

ATTACHMENT

To

term, 190

p. q.

The Commonwealth of Virginia,

To the Sheriff of the County of Nansemond Greeting:

WHEREAS W B Ferguson trading as & doing  
business as W B Ferguson & Co has

instituted in our Circuit Court of the County of Nansemond, a certain action of  
against

Angie E Winborne, H O Winborne and  
J R Winborne

which action is now pending in the said Court: And there having been filed in the Clerk's Office  
of our said Court an affidavit that the claim of said plaintiff asserted in the said suit is believed to  
be just, that the affiant believes the plaintiff is entitled to or ought to recover \$411.58

at the least, with interest thereon to be computed after the rate of six per  
centum per annum from the 1st day of August 1902, till payment, and that to  
the best of the said affiant's belief the said defendant

Angie E Winborne and J R Winborne

1. ~~a foreign corporation, or~~ are not resident of this State, and have estate  
of debts owing to said defendant within the County of Nansemond in which the  
action is, ~~or~~ ~~are~~ & are ~~sued~~ with a defendant residing therein:

2. ~~X~~ removing, or about to remove out of this State, with intent to change domicile:

3. ~~X~~ removing, or intend to remove, or have removed

~~own estate, or the proceeds of the sale of property, or a material part of such  
estate or proceeds, out of this State, so that process of execution on a judgment, when obtained  
in said action, will be unavailing;~~

4. are converting, or are about to convert, or have converted their property, or some  
part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud  
their creditors;

5. Have assigned or disposed of, or are about to assign or dispose of, their estate, or  
some part thereof, with intent to hinder, delay or defraud their creditors;

Therefore we command you, that you attach the estate of the said Angie E  
Winborne and J R Winborne for the amount of the said  
Four hundred and eleven and 58/100 dollars, with interest thereon, as afore-  
said, and the costs, and that you secure such estate so attached in your hands, or so provide that  
the same may be forthcoming and liable to further proceedings thereupon to be had before our said  
Court, on the first day of the next October term thereof; (October 14/1902) and that you make return hereof  
at the rules to be held in Clerk's office of our said Court, on the Monday in next  
(or to the said Court on the first day of the next term thereof) how you have executed the same.  
And have then there this writ.

Witness, A. P. Gomer Clerk of our said Court, at the court-house  
this 5th day of September, 1902, in the 27th year of the Commonwealth.

A. P. Gomer Clerk

Executed this the 6<sup>th</sup> day of Sept 1902 by levying on the following real estate of the Defendants Angie E Winborne and J R Winborne, Co-wit: A tract of land containing forty acres more or less. Known as the "Jethro Butler" place, and bounded by the lands Jordan Holland's estate, James Holland and others. Also a certain other tract of land containing sixty one and one half acres bounded by the lands of Dempsey Butler and Jethro Butler deceased's estate. Both of said tracts of land are located near Buckhorn in the County of Stansbury Co.

J J DeBerry Deputy  
for A H Baker Sheriff

Form No. 243.

W B Ferguson & Co

ATTACHMENT

Angie E Winborne  
and others

To October term, 1902

McLemore Harbitt p. q.

as being in possession of effects of, or being indebted to the defendant.

The Plaintiff designate.

Mrs. Angie E. Winborne, one of the defendants, owns a tract of land in the county of Nansemond, Virginia, near Buckhorn, bounded and described as follows:

1st. A tract containing forty acres, more or less, known as the "Jethro Butler" place, bounded by the lands of Jordan Holland's estate, James Holland and others.

2nd. A certain other tract of land in said county containing sixty one and one half acres, bounded by the lands of Dempsey Butler and Jethro Butler, deceased's estate.

The above described two tracts together constituting the original home place of Angie E. Winborne and J. R. Winborne.

--Attach the same in accordance with Section 2967  
of the Code of 1887.--

Mrs. Angie E. Winborne, one of the defendants, owns a tract of land in the county of Hansemond, Virginia, near Buckhorn, bounded and described as follows:

1st. A tract containing forty acres, more or less, known as the "Jethro Butler" place, bounded by the lands of Jordan Holland's estate, James Holland and others.

2nd. A certain other tract of land in said county containing sixty one and one half acres, bounded by the lands of Dempsey Butler and Jethro Butler, deceased's estate.

The above described two tracts together constituting the original home place of Angie E. Winborne and J. R. Winborne.

--Attach the same in accordance with Section 2967 of the Code of 1867.--

The Commonwealth of Virginia,

To the Sheriff of the County of Nansemond Greeting:

WHEREAS W.B. Ferguson trading & doing business as  
W.B. Ferguson & Co. has

instituted in our Circuit Court of the County of Nansemond, a certain action of

against  
Angie E. Winborne, H. O. Winborne &  
J. R. Winborne

which action is now pending in the said Court: And there having been filed in the Clerk's Office of our said Court an affidavit that the claim of said plaintiff asserted in the said suit is believed to be just, that the affiant believes the plaintiff is entitled to or ought to recover \$411.<sup>58</sup> at the least, with interest thereon to be computed after the rate of six per centum per annum from the 1st day of August, 1902, till payment, and that to the best of the said affiant's belief the said defendant

1. ~~is~~ are a foreign corporation, or are not a resident of this State, and have estate or debts owing to said defendant within the County of Nansemond in which the action is, or ~~are~~ are sued sued with a defendant residing therein:

2. ~~is~~ are removing, or about to remove out of this State, with intent to change domicile:

3. ~~is~~ are removing, or intend to remove, or have removed

~~owns~~ own estate, or the proceeds of the sale of ~~property~~ property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing:

4. are converting, or are about to convert, or have converted their property, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud their creditors:

5. Have assigned or disposed of, or are about to assign or dispose of, their estate, or some part thereof, with intent to hinder, delay, or defraud their creditors:

Therefore we command you, that you attach the estate of the said Angie E. Winborne  
& J. R. Winborne for the amount of the said Four hundred & Eleven & 58/100 Dollars, with interest thereon, as afore-said, and the costs, and that you secure such estate so attached in your hands, or so provide that the same may be forthcoming and liable to further proceedings thereupon to be had before our said Court, on the 1st day of the next April term thereof <sup>1903</sup> and that you make return hereof ~~at the rules to be held in Clerk's office of our said Court, on the~~ Monday in next ~~(or to the said Court on the first day of the next term thereof)~~ how you have executed the same. And have then there this writ.

Witness, A. P. Gomer Clerk of our said Court, at the court-house,  
this 4th day of November, 1902, in the 127 year of the Commonwealth.

A. P. Gomer clerk

The Plaintiff designates

W. S. Cross of Evansburg  
County, Virginia

as being in possession of effects of, or being indebted to the defendant.

Angie Ellinborne.

W. B. Ferguson & Co.  
by M. L. Linton & Corbitt their attorneys

Form No. 243.

vs.

ATTACHMENT

W. B. Ferguson & Co

Ellinborne & Co

To

term, 1

p. q.

Chancery

1892

Records of the County of Harrison 1902, by determining  
a true copy of the within process is at Harrison and  
is to be made in person. I and Angie Ellinborne not found  
in my country. M. L. Linton & Corbitt

Mrs. Angie E. Winborne, one of the defendants, owns a tract of land in the county of Nansemond, Virginia, near Buckhorn, bounded and described as follows:

1st. A tract containing forty acres, more or less, known as the "Jethro Butler" place, bounded by the lands of Jordan Holland's estate, James Holland and others.

2nd. A certain other tract of land in said county containing sixty one and one half acres, bounded by the lands of Dempsey Butler and Jethro Butler, deceased's estate.

The above described two tracts together constituting the original home place of Angie E. Winborne and J. R. Winborne.

--Attach the same in accordance with Section 2967 of the Code of Virginia.--



Served June 24th 1905. On the following real estate of the defendant Mrs. Angie E. Winborne, to-wit: 1st. A certain tract of land near Buckhorn in the County of Caswell, Va. containing 40 acres, more or less, known as the "Jethro Butler" place, bounded by the land of Jordan Halland's estate, James Halland & others. 2nd. A certain other tract of land near Buckhorn containing 6 1/2 acres, bounded by the land of Dempsey Butler, the "Jethro Butler" estate & others. The above two tracts together constituting the original home place of Angie E. & R. Winborne. I also served ~~copy~~ of the within attachment on Thomas P. Winborne the person in possession of the above real estate, on June 24th 1905; by delivering to him in person a copy of the same; he being at the time in the County of Caswell -

J. J. W. Berry Deputy  
For A. C. Baker Sheriff

Form No. 243.

W. B. Ferguson et al

ATTACHMENT

U.S.

A. E. Winborne  
and others.

To

term, 1

p. q.

Angie E. Winborne who is  
in possession of the land

as being in possession of effects of, or being indebted to the defendant.

The Plaintiff designate

In the Circuit Court of the County of Chancery

W.B. Ferguson Trading as  
W.B. Ferguson & Co.

Plaintiff

against

In Chancery

Angie E. Winborne, H. O. Winborne  
and J. R. Winborne

Defendants

W.B. Ferguson for and on behalf of W.B. Ferguson & Co. maketh oath and saith, that he believes the claim, for which the above entitled action is instituted, to be just; that he, the affiant, believes that W.B. Ferguson & Co. entitled to and ought to recover in said action \$ 411<sup>58</sup> (at the least), with interest thereon, to be computed at the rate of 6% per centum per annum, from the 1st day of August 1902, till paid; and that to the best of his belief the said defendants: Angie E. Winborne and J. R. Winborne

1. ~~is~~ are a foreign corporation, or are not residents of this State, and have estate or debts owing to said defendants within the County of Chancery in which the action is ~~not~~ are sued with a defendant residing therein;

2. ~~is~~ removing or about to remove out of this State, with intent to change ~~its~~ domicile;

3. ~~is~~ removing, or intend to remove, or has removed

~~owns~~ own estate, or the proceeds of the sale of ~~its~~ property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;

4. Are converting, or are about to convert, or have converted their property or some part thereof into money, securities, or evidences of debt, with intent to hinder, delay or defraud their creditors;

5. Have assigned or disposed of, or are about to assign or dispose of, their estate, or some part thereof, with intent to hinder, delay, or defraud their creditors.

Subscribed and sworn to before me this 5<sup>th</sup> day of September 1902

My term of office expires July 28<sup>th</sup> 1906.

W.B. Ferguson  
Angie E. Winborne  
H. O. Winborne  
J. R. Winborne  
Notary Public

*W B Ferguson & Co*

vs. }

AFFIDAVIT FOR  
ATTACHMENT.

*Angie E Winborne &  
Others*

Filed the *5th* day of *Sept* 19*02*

The Commonwealth of Virginia,

To the Sheriff of the County of Nansemond Greeting:

WHEREAS *W B Ferguson trading & doing  
business as W B Ferguson & Co* has

instituted in our *Circuit* Court of the *County of Nansemond*, a certain action ~~of~~ against

*Angie E Winborne & O Winborne and  
J R Winborne*

which action is now pending in the said Court: And there having been filed in the Clerk's Office of our said Court an affidavit that the claim of said plaintiff asserted in the said suit is believed to be just, that the affiant believes the plaintiff *is* entitled to or ought to recover *\$411.58*

at the least, with interest thereon to be computed after the rate of six per centum per annum from the *1st* day of *August* 1902, till payment, and that to the best of the said affiant's belief the said defendant~~s~~

*Angie E Winborne and J R Winborne*

1. ~~a foreign corporation, or are~~ not a resident~~s~~ of this State, and have estate ~~of~~ debts owing to said defendants within the *County of Nansemond* in which the action is, ~~or are sued~~ *sued* with a defendant residing therein:

2. ~~removing, or about to remove out of this State, with intent to change~~ domicile:

3. ~~removing, or intend to remove, or ha~~ removed

~~own estate, or the proceeds of the sale of property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;~~

4. *are* converting, or *are* about to convert, or *have* converted *their* property, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud *their* creditors;

5. *Have* assigned or disposed of, or *are* about to assign or dispose of, *their* estate~~s~~, or some part thereof, with intent to hinder, delay or defraud *their* creditors;

Therefore, we command you, that you attach the estate~~s~~ of the said *Angie E Winborne and J R Winborne* for the amount of the said *Four hundred and eleven and 58/100* dollars, with interest thereon, as afore-said, and the costs, and that you secure such estate~~s~~ so attached in your hands, or so provide that the same may be forthcoming and liable to further proceedings thereupon to be had before our said Court, on the *first* day of the next *October* term thereof, *(October 14th 1902)* and that you make return hereof ~~at the rules to be held in Clerk's office of our said Court, on the~~ Monday in next ~~(or to the said Court on the first day of the next term thereof)~~ how you have executed the same. And have then there this writ.

Witness, *A P Gomer* Clerk of our said Court, at the court-house this *5th* day of *September*, 1902, in the *127<sup>th</sup>* year of the Commonwealth.

*A P Gomer clerk*

The Plaintiff designate \_\_\_\_\_

\_\_\_\_\_ as being in possession of effects of, or being indebted to the defendant.

as being in possession of effects of, or being indebted to the defendant.

Angie E Winsome

}

Sept 6/90  
Not found in my county

---

J. H. Berrydahl  
Vallidated ship

W. L. Moore & Corbitt p. q.

$-p, q$ .

The Commonwealth of Virginia,

To the Sheriff of the County of Nansemond Greeting:

WHEREAS *W B Ferguson trading & doing business as W B Ferguson & Co has*

instituted in our *Circuit* Court of the *County of Nansemond* a certain action of *of* against

*Angie E Winborne & A Winborne and J R Winborne*

which action is now pending in the said Court: And there having been filed in the Clerk's Office of our said Court an affidavit that the claim of said plaintiff asserted in the said suit is believed to be just, that the affiant believes the plaintiff *is* entitled to or ought to recover *\$411.58*

at the least, with interest thereon to be computed after the rate of six per centum per annum from the *1st* day of *August* 190*2*, till payment, and that to the best of the said affiant's belief the said defendant *S*

*Angie E Winborne and J R Winborne*

1. ~~a foreign corporation, or~~ *are* not residents of this State, and have estate or debts owing to said defendantS within the *County of Nansemond* in which the action is, ~~and are sued~~ *sued* with a defendant residing therein:

2. ~~removing, or about to remove out of this State, with intent to change~~ domicile:

3. ~~removing, or intend to remove, or ha~~ removed

~~own estate, or the proceeds of the sale of property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;~~

4. *are* converting, ~~are~~ about to convert, or have converted *their* property, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud *their* creditors;

5. Have assigned or disposed of, ~~are~~ about to assign or dispose of, *their* estates, or some part thereof, with intent to hinder, delay or defraud *their* creditors;

Therefore we command you, that you attach the estateS of the said *Angie E Winborne and J R Winborne* for the amount of the said *Four hundred and eleven and 58/100* dollars, with interest thereon, as afore-said, and the costs, and that you secure such estateS so attached in your hands, or so provide that the same may be forthcoming and liable to further proceedings thereupon, to be had before our said Court, on the *first* day of the next *October* term thereof, *(October 14th 1902)* and that you make return hereof at the rules to be held in Clerk's office of our said Court, on the *Monday* in *next* ~~(or to the said Court on the first day of the next term thereof)~~ how you have executed the same. And have then there this writ.

Witness, *A P Somer* Clerk of our said Court, at the court-house this *5th* day of *September*, 190*2*, in the *127th* year of the Commonwealth.

*A P Somer clerk*

Mrs. Angie E. Winborne, one of the defendants, owns a tract of land in the county of Nansemond, Virginia, near Buckhorn, bounded and described as follows:

1st. A tract containing forty acres, more or less, known as the "Jethro Butler" place, bounded by the lands of Jordan Holland's estate, James Holland and others.

2nd. A certain other tract of land in said county containing sixty one and one half acres, bounded by the lands of Dempsey Butler and Jethro Butler, deceased's estate.

The above described two tracts together constituting the original home place of Angie E. Winborne and J. R. Winborne.

--Attach the same in accordance with Section 2967 of the Code of 1887.--

The Plaintiff designate

as being in possession of effects of, or being indebted to the defendant.

Form No. 243.

*J. R. Winchell*

vs. } ATTACHMENT

*What appears  
in my custody*

To term, 190

*Madame Hearbitt* p. q.

"Howdy"

Zinnis NC Jan 10<sup>th</sup> 1902

Dear Ballie We received your letter The 8<sup>th</sup> was glad to hear that you are gettin a long alright Ballie When you get the hands to pick the peanuts hire Honie or Whitney to stay & pick off with the hands & let them look after the peanuts & see that hands do not waste them you will have to give him something extra to look after the hands but you see that Honie or Whitney can pick off also have them picked off as early as possible & have them packed up Every night let hear if you got the goods I shipped you alright enclosed you will find a bill of lading for all I shipped you

Thallie you had better  
Hine honey or Whitney to  
just to look after the peanuts  
& to put all of the Wines  
away you see we want to  
save them for feed do not  
fail to have them saved  
look after your business & do  
not sell below cost  
look out for what it cost you  
I have ordered a bill from  
Baltimore for you as soon  
as it comes send me a  
telegram so I can come to  
help you open & mark them  
I ordered a bill of 1,52.00  
from Baltimore well I  
hope you are getting  
along alright good by  
from your Father

John R. Winborne

Sx  
11

A. E. WINBORNE,  
DEALER IN  
\*General Merchandise\*

H.O.M. 5-11  
Tunis, N. C., Jan 4 1902

Ballie I could not ship you the  
goods until Tuesday they will be  
shipped by way of Franklin Bay  
Steamer I should not start to selling  
before Wednesday coming Ballie I  
sent you a lock to have put on the corn  
crib get Bud Winborne to put it on for  
me & I will pay him for it Take care of  
Rosa & the peanuts I have them picked  
of just as soon as you can be carefull  
how you unpack the Batts & don't break  
anything & don't lose anything in the  
straw Ballie I expect to have  
a law suit with Gay over that  
73.70 that he gave me a draft for  
in favor of Lawrence Pincus & Co of  
Norfolk Va after I left you last  
Wednesday Evening I saw him Gay

At the Norfolk & Carolina wharf a few  
minutes before the train left I ask him  
for a check & he positively declared he  
would not give me another note nor  
a check either so you see it means  
a law suit Will order your goods  
from Baltimore just as soon as I  
can make a payment to them Halli  
take care of your Bills dont lose any  
bills or your ethence Bill you get  
for freight in fact same all of  
your letters you do not know what you  
may want with them Halli I do not  
know what to do with George I  
have not been offered but I go  
Hallands for him & I want you to tell  
me what you think is best for me  
to do I have bought another hog  
mate to the two I had already  
bought of Francis send me a  
statement of all bills you have. Just  
send me the amount to Gay has quit  
for good I think the mill will

Bad night  
This year  
makes shingles

The following deposition admits as evidence to be read  
in this cause.

I, Henry Lawrence, of the County of Hertford,  
State of North Carolina, would, upon my oath, state  
if called upon to testify in the chancery cause of  
W. B. Ferguson & Company vs. H. O. Winborne &  
Company, as follows:

Q. 1- Where were you living during the time that  
A. E. Winborne and J. R. Winborne lived at Tunis  
and conducting a commissary store there, and did  
you know them at that time?

A. 1- I was living at Tunis. Yes I knew  
them.

Q. 2- Do you know about what time Holly Winborne left  
there and opened up a store at Buckhorn or Purvis?

A. 2- He left Tunis about the  
last of the summer or early in  
the fall of 1901

Q. 3- Do you know who composed the firm and was doing  
business at Tunis at that time known as H. O. Win-  
borne & Company, and who composed the firm at Buck-  
horn?

A. 3- H. O. Winborne, Mrs. A. E. Winborne  
and J. R. Winborne composed  
the firm at both places.

Q. 4- When and what had you ever heard Mrs. A. E.  
Winborne say about this partnership, about the busi-  
ness at Buckhorn or Purvis, and especially as to who  
composed the partnership or owned the business there?

A. 4- On several occasions I heard  
her say that she and J. R. Winborne  
and H. O. Winborne owned the  
business at both places and that  
the business at Buckhorn or Purvis  
was owned by the same firm that  
owned the business at Tunis.

Q. 5- When did you hear Mrs. Winborne say this?

A. 5- About the time they were  
sueing Jno. L. Gay.  
I asked her on one occasion if she  
and J. R. Winborne and H. O. Winborne were  
interested in the business at Buckhorn  
or Purvis and she said they were.

Henry Lawrence

Witness to Signature.

A. Vanthcett  
W. Callerton

Copy

In the Circuit Court of Hansemond County, Virginia.

-----  
W. B. Ferguson & Co., )  
) )  
) )  
v. )  
) )  
Angie E. Winborne et als. )  
) )  
-----

The depositions of Mr. J. A. Holloman and Hon. George Couper, citizens of Gates County, in the State of North Carolina, taken before Dr. S. S. Daniel, a Justice of the Peace, for the said county of Gates, in pursuance of interrogatories herewith submitted, the said interrogatories being agreed to by counsel for plaintiffs and defendants, and formal authentication of the depositions is also hereby waived; the said evidence being taken to be read in the above named chancery cause of W. B. Ferguson & Co. v. Angie E. Winborne and others.

-----O-----

The witness, J. A. Hollaman, being duly sworn, deposes and says, as follows:

Question. / What is your name, age, residence, occupation, and do you know the defendants to this suit, namely, J. R. Winborne, H. O. Winborne and Mrs. Angie E. Winborne, the wife of J. R. Winborne?

Answer.

*John A. Holloman, 37, Tunis, N.C.  
Farmer & timber buyer, yes*

Q. 2

Were you present during the progress of a trial sometime during the year 1902, in which H. O. Winborne & Co. sued John L. Gay before Justice A. J. Parker? If so state as near as you can when and where the trial occurred.

A.

*Yes  
in Winton N.C. Jan'y  
25<sup>th</sup> 1902*

Question. 3 Did either of the plaintiffs in that case, on that occasion, state who composed the firm of H. O. Winborne & Co., and if so, which one of them so stated?

A.

Yes. John R. Winborne

Q. 4

Please state what was said, if anything, with reference to the business at Purvis, or Buckhorn, in Nansemond County?

A.

John R. Winborne said that the business at Buckhorn or Purvis<sup>va</sup> belonged to the same parties as the business at Tammis N.C.

Q. 5

Was any statement made, and if so by whom, concerning the amount of goods bought for the partnership, and the financial standing of the firm?

A.

Yes. Jno R Winborne stated two thousand dollars worth of goods <sup>was</sup> bought for the partnership, one half of which were to be shipped to Purvis or Buckhorn <sup>va</sup> where the said partnership were conducting a mercantile business

Q. 6

Please state any other matter or thing that you may know, or may have heard either of the parties constituting the firm of H. O. Winborne & Co. say with reference to the partnership business.

A.

John R. Winborne stated that the firm of H. O. Winborne & Co consisted of H. O. Winborne, Angus E. Winborne and himself, and that they did have from two thousand to twenty five hundred dollars in cash to carry on said business

Interrogatories filed for the cross-examination of  
Mr. J. A. Hollaman.

Question I. Referring to Question 2 in your direct examination, please state whether or not you were interested in this trial, a witness, or simply a bystander? For what was H. O. Winborne & Co. suing John L. Gay? When did the cause of action or debt arise? If an account, during what year was it contracted or made, 1900, 1901 or 1902?

Answer. *Had no interest in it, was simply a bystander.*

*It appeared from the evidence that J. L. Gay had given H. O. Winborne & Co. his note ~~which~~ for \$7370 which note ~~which~~ said Winborne & Co. had lost and were suing to recover said same*

Q. 2. Referring to Question 3 in your direct examination, who were the plaintiffs in that case, and if the plaintiff stated the names of the members of H. O. Winborne & Co. as of what time did his statement cover, 1901, 1902 or 1903?

Was Angie E. Winborne or H. O. Winborne present at this time?

A. *H. O. Winborne & Co. Yes. H. O. Winborne Angie E. Winborne & John R. Winborne John R. Winborne made this statement, at the trial that the firm was composed of the above named parties. No either of them was present*

Q. 3. Referring to Question 4 in your direct examination what business at Buckhorn or Purvis in Nansemond County are you talking about? Who said anything about it then? What did any business in Nansemond County have to do with an action at law between H. O. Winborne & Co., of Tunis, and John L. Gay?

A. *The mercantile business referred to in my answer to question #11 on direct examination. John R. Winborne, John R. Winborne stated that the firm of H. O. Winborne & Co. were the same at Purvis or Buckhorn & Tunis N.C.*

Q. 4. Referring to Question 5 in your direct examination what partnership and the financial standing of what firm are you speaking ~~of~~? Who were the partners and how did you know they were partners?

A. *Of H. O. Winborne & Co. John R. Winborne stated the the partners were H. O. Winborne, Angie E. Winborne & himself.*

Q. 5. Question 6 in <sup>the</sup> your direct examination of this witness is objected to by the defendants as being beyond this issue and res inter alios actae.

Q. 6. What do you know about an alleged partnership between Angie E. Winborne and H. O. Winborne, doing business at Buckhorn, Virginia?

A. *Nothing more than what was stated by John R. Winborne.*

Q. 7. To your knowledge were A. E. Winborne and H. O. Winborne ever partners in business, if so, when and where and how do you know?

*I only know what John R. Winborne stated upon the occasion heretofore referred to.*  
*J. A. Holloman*

The witness Hon. George Cowper, being duly sworn, deposes and says, as follows:

Question./ What is your name, age, residence, occupation, and do you know the defendants to this suit, namely, H. O. Winborne, J. R. Winborne and Angie E. Winborne the wife of J. R. Winborne?

A.

*Geo Cowper, 55, Winston, Atty-at-Law  
I know John R. Winborne. With the  
others I have no personal acquaintance*

Q. 2

Were you present during the progress of a trial sometime during the year 1902, in which H. O. Winborne & Co. sued John L. Gay before Justice A. J. Parker? If so, state as near as you can when and where the trial occurred?

A.

*Yes sir. The trial took place  
Jan'y 25<sup>th</sup> 1902, in my  
office in the Town of Winston  
N.C.*

Q. 3

Did either of the plaintiffs in that case, on that occasion, state who composed the firm of H. O. Winborne & Co., and if so, which one of them so stated?

A.

*J.R. Winborne stated that the firm  
of H.O. Winborne & Co. was composed of  
H.O. Winborne, Angie Winborne & himself*

Q. 4

Please state what was said, if anything, with reference to the business at Purvis, or Buck horn in Nansemond County?

A.

*J.R. Winborne stated that the said firm  
was carrying on a mercantile business  
at Purvis Buck horn Va.*

Q. 5

Was any statement made, and if so by whom, concerning the amount of goods bought for the partnership, and the financial standing of the firm?

A.

Yes Sir J. R. Winborne stated that the firm of H. O. Winborne & Co. had purchased two thousand dollars worth of goods, 1/2 of which was shipped to be shipped to Purvis to said firm & the 1/2 to said firm at Tunis; that said firm was entirely solvent being worth \$2500.00, I think in excess of liabilities.

Q. 6

Please state any other matter or thing that you may know, or may have heard either of the parties constituting the firm of H. O. Winborne & Co. say with reference to the partnership business?

A.

Know nothing else

Interrogatories filed for the cross-examination of  
Hon. George Cowper.

Question 1. Referring to Question 2 in your direct examination, please state whether or not you were interested in this trial, a witness, or simply a bystander? For what was H. O. Winborne & Co. suing John L. Gay? When did the cause of action or debt arise? If an account, during what year was it contracted or made, 1900, 1901 or 1902?

Answer.

*I was J. L. Gay's atty. in said suit  
For the recovery of \$73.70 ~~in interest~~  
due by note*

Q. 2. Referring to Question 3 in your direct examination who were the plaintiffs in that case, and if the plaintiff stated the names of the members of H. O. Winborne & Co. as of what time did his statement cover, 1901, 1902 or 1903? Was Angie E. Winborne or H. O. Winborne present at this time?

A.

*H. O. Winborne & Co. John R.  
Winborne, who was present & prosecuting  
the suit, stated that H. O. Winborne & Co.  
was composed of H. O. Winborne Angie Winborne  
and himself. He made no statement  
as to when partnership was formed. NO.*

Q. 3. Referring to Question 4 in your direct examination what business at Buckhorn or Purvis in Nansemond County are you talking about? Who said anything about it then? What did any business in Nansemond County have to do with an action at law between H. O. Winborne & Co., of Tunis, and John L. Gay?

A.

*The mercantile business of  
Tunis of J. R. Winborne. J. R. Winborne  
in the action above referred to judgment  
was given plaintiff for \$73.70 with interest  
until paid. The amount said for was  
evidenced by a note given by*

John L Gay the then plaintiffs.  
It was admitted by plaintiffs that  
said note had been lost and they  
could not produce it. Judgment  
was rendered as above stated  
upon the condition that no execution  
issue on it until the plaintiffs  
file with the Court a good and  
sufficient bond, in the sum of  
Twenty five dollars to be approved  
by the Court, to indemnify said Gay  
against the payment of said lost note.  
Said J R Winborne offered the Court  
a bond in the sum required to be  
executed by H. O. Winborne & Co, said  
firm composed of H. O. Winborne  
Angus Winborne & himself. Upon  
the Court's examining him touching  
the solvency & responsibility of the  
proposed obligors, he stated that  
they were fully solvent and  
worth, I think, \$2,500.00 in excess of  
their liabilities & legal obligations.

Geo. H. Winborne

1876

Q. 4. Referring to Question 5 in your direct examination what partnership and the financial standing of what firm are you speaking of? Who were the partners and how did you know they were partners?

A.

*H. O. Winborne & Leo  
J. R. Winborne stated that  
H. O. Winborne Angus Winborne  
& himself composed the  
partnership*

Q. 5. Question 6 in your direct examination of this witness is objected to by the defendants as being beyond this issue and res inter alios actae.

Q. 6. What do you know about an alleged partnership between Angie E. Winborne and H. O. Winborne, doing business at Buckhorn, Virginia?

A.

*Nothing except statement  
made by John R. Winborne  
which I have been referred  
to in my answer made  
in this deposition*

Q. 7. To your knowledge were A. E. Winborne and H. O. Winborne ever partners in business, if so, when and where and how do you know?

*The only knowledge I have  
is from the statement made  
by John R. Winborne to which  
I have already referred in  
my answer in this deposition.*

*Geo. Cooper*

*State of North Carolina  
Hertford County*

*I, S. S. Daniel a  
Justice of the Peace for said County and  
State do hereby certify that John  
A. Holloman & George Weaver after  
being duly sworn by me, made*

ansured and deposed as herein  
set out and that each for  
himself duly signed his deposition  
as herein appears.

This 10th day of June 1903

S. Daniel JP

Deposition of  
Frank Hallman and  
Judge Goldberger-

Frogman's

Edinboro Pa.

Number 567-N.—CLERK'S CERTIFICATE THAT A MAN IS A JUSTICE OF THE PEACE USED TO ATTACH TO A MAGISTRATE'S WARRANT, INSURANCE PAPERS, AND PROBATING DEEDS, &c., WHEN SENT OUT OF THE COUNTY.—Printed and for sale at Harrell's Printing House, Weldon, N. C.

**STATE OF NORTH CAROLINA,**

*Herford* COUNTY.

I, *Thos. D. Boone* Clerk of the Superior Court of said County, do  
certify that *S. S. Daniel* whose genuine signature appears to the  
foregoing *Deposition* is, and was at the time of signing the same, an acting Justice  
of the Peace for said County, and full faith and credit are due to his official acts.

Given under my hand and official seal, this the *16* day of *June* 190*3*

*Thos. D. Boone*  
Clerk Superior Court *Herford* County.

Evidence taken in the case of W. B. Ferguson & Company v. Angie E. Winborne and others before Julia A. Brinkley, a Notary Public, in the office of McLemore & Corbitt, in Suffolk, Virginia, March 1st., 1905.

James L. McLemore for plaintiff  
PRESENT:  
Robert W. Withers for defendants

W. H. PILAND, being first duly sworn, deposes and says:

DIRECT EXAMINATION by Mr. McLemore--

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

A. W. H. Piland, 34, reside in Portsmouth, am a licensed steam boat engineer, and no the defendants in this suit but do not know the plaintiffs.

Q.2 Where were you living in the years 1901 and 1902?

A. At Tunis, N. C.

Q. 3 About when did you leave Tunis and go to Portsmouth?

A. I went to Portsmouth in October, 1903.

Q.4 Had A. E. Winborne, J. R. Winborne and H. O. Winborne left Tunis before you left, and if so about how long?

A. Yes sir. They left Tunis in December 1902, and I left in October, 1903.

Q.5 Did you know these people very intimately while you were there?

A. Yes sir, I saw them every day of my life.

Q.6 Did all of the Winbornes leave Tunis at the same time?

A. No, H. O. Winborne left before the others did.

Q.7 Do you know where they went?

A. J. R. Winborne and A. E. Winborne went to Elizabeth City, and H. O. Winborne went to Purvis, I suppose. That is what they said.

Q.8 Do you know anything about the trial before the Justice in which the Winbornes sued John L. Gay?

A. Yes, I was at the trial.

Q.9 Were you summoned there or did you just happen there?

A. I just happened to be there.

Q.10 Did you hear the testimony of J. R. Winborne in this trial?

A. I did.

Q.11 What did he say with reference to the partnership, if anything?

A. He said that the firm of H. O. Winborne & Company were worth \$2500.00 and were amply responsible for any endorsements to the note, or to that effect, that they should make. I don't know the exact language used, but I know that was the substance of it .

Q.12 Did he say anything about who composed the firm?

A. Yes sir, J. R. Winborne, H. O. Winborne and A. E. Winborne.

Q.13 Was anything said by Mr. Winborne in this trial about what businesses these three people were running?

A. He said they were conducting a mercantile business at Tunis, N. C. and Buckhorn, Va. and that they had recently purchased a large amount of goods for the two places.

Q.14 Was A. E. Winborne present at this time?

A. No sir.

Q.15 Where was Mrs. A. E. Winborne living at this time?

A. At Tunis, N. C.

Q.16 About when was this trial?

A. To the best of my recollection it was the Spring of 1902, early Spring or Winter 1902.

Q.17 Where was Mrs. Winborne at this time staying?

A. Tunis.

Q.18 Who was in actual charge of the mercantile business at Tunis?

A. J. R. Winborne and A. E. Winborne.

Q.19 Did Mrs. A. E. Winborne give the business at Tunis any of her personal attention?

A. She did. She was there all day and nights until they closed up.

Q.20 Do you mean that she was in the store personally overseeing the same?

A. Yes.

Q.21 Did you ever hear Mrs. A. E. Winborne make any statement with reference to the business at Buckhorn, and if so who was present, and the circumstances connected therewith, as near as you can?

A. Yes, I heard her say that—one day I was in the store and they were shipping goods that day from Tunis to Buckhorn, and she said, that Holley was running short of that line of goods and that they had more than their stock there required, and that they were shipping a portion of them to Holley. J. R. Winborne and his small son, Johnny, were present.

Q.22 Do you know whether they shipped goods from this store to Holley more than once?

A. I do. I know they shipped him twice or more. I recollected twice.

"23 Did you ever hear Mrs. Winborne say who composed the firm or owned the business at Buckhorn?

A. I did.

Q.24 Who did she say owned it?

A. "Myself, John (referring to her husband) and Holley."

Q.25 Were you present, or did you ever hear her say anything to Mr. Gay about paying the note that was sued on at Winton?

A. I was present and heard her say to Mr. Gay that she thought he had treated her very badly; that they were owing bills for the Tunis store and at Buckhorn, and that they needed money to pay the bills.

Q.26 About how many goods were being shipped to Holley at the time that you referred to as being in the store?

A. I could not say. There were two or more boxes. I could not say positively, Of course I don't know what were in those boxes.

Q.27 About how long before they closed the store at Tunis as well as you remember?

A. I think it must have been some eight months, probably longer, I don't recollect exactly.

Q.28 Was that shipment before or after the suit at Winton?

A. Before the suit at Winton.

Q.29 About how long from the time of the suit at Winton was it before they closed their store at this place?

A. It must have been ten months or eleven months. My recollection of the suit at Winton is that it was in the Winter or early Spring of 1902, and they closed business at Tunis in December 1902 I recollect distinctly.

CROSS EXAMINATION BY MR. WITHERS.

Q.30 The two shipments made from Tunis to Buckhorn must have occurred then in January or February, 1902?

A. About that time. I don't recollect the dates exactly, because I never expected to hear of it again.

Q.31 Were not both of the shipments household goods for the use of H. O. Winborne?

A. No sir, neither one of these shipments were not, because they were shipped from the store.

Q.32 I do not mean altogether household goods, but I mean household and store fixtures?

A. Possibly some of them were store fixtures. I don't know what was in the boxes.

Q.33 Such as bed-clothing, lamps, scales.

A. I am unable to say about that.

Q.34 Was not the other shipment over-alls?

A. I could not say. I don't know what the boxes contained. I know they handled a good many over-alls at Tunis.

Q.35 At the trial between Gay and the Winbornes at Winton was not a statement made by John Winborne as follows: Gay had given his note to pay a debt he owed Winborne, and Winborne had lost the note and were suing Gay on the lost note; and at the trial after the Justice had given judgment against Gay he objected saying, in effect, that some one might find the note and bring it up against him, and then the Justice said that the Winbornes must put up an indemnifying bond, then the question was raised as to who would be surety on the bond, and John Winborne said that he would give the bond and A. E. Winborne and H. O. Winborne would be surety. The question was then asked as to what

they were worth, and then it was that he said that the three of us are worth "2500.00; that we have stores at Buckhorn and Tunis, and we have recently bought some goods, or words to that effect?

A. Yes sir, the statement that he made was to that effect and he said that the firm of H. O. Winborne & Co. would sign the bond. It was then asked who the firm of H. O. Winborne & Co. was and he said it was J. R. Winborne, A. E. Winborne and H. O. Winborne.

Q.36 Did he say that the first of H. O. Winborne & Co. would sign the bond?

A. He said that the firm of H. O. Winborne & Co. would sign it

Q.37 Was not this bond signed J. R. Winborne, and H. O. Winborne and A. E. Winborne offered as sureties?

A. I am unable to say, I never saw the bond.

Q.38 Is it not true that Gay and the Justice would not accept these sureties, and that Mr. Ben Baines was called on and did become surety on the bond?

A. I am unable to say in regard to Baines.

Q.39 This has been several years ago?

A. Yes.

Q.40 Do you undertake to give the exact language of J. R. Winborne on that occasion?

A. No sir, I simply give it in detail as near as I can.

Q.41 Your statement and Mr. Winborne's are not very different in their language, but are very different in their legal effect. Mr. Winborne states that he offered the three parties named, A. E. Winborne, H. O. Winborne and J. R. Winborne on the bond. You state that he offered the same three on the bond and stated

7

that they constituted the firm of H. O. Winborne & Co. I asked you if you are not quite certain of the identical language of Mr. Winborne on this occasion?

A. I am not.

Q.42 I ask you now, might you not have given one or two words different from the way they actually were spoken?

A. Possibly I might.

Q.43 Please tell me the circumstances under which you heard Mrs. Winborne say that she, John and Holley composed the firm of H. O. Winborne & Co. at Buckhorn, if she said so?

A. I heard her say that they were buying goods for both places and--my memory is not clear on that, I would not say.

Q.44 Then I understand that you wish, to this extent only, to change your direct testimony?

A. I do.

Q.45 When Mrs. Winborne said to Mr. Gay that we are needing money to pay our bills, where was she and where were you and Gay?

A. I was standing on the ground in the road right in front of Winbornes' store at Tunis, and Mrs. Winborne was either standing on the stoop or on the ground right in front of the store.

Q.46 And what was her exact language?

A. She told Mr. Gay that she thought he had treated her rascally, that he owed them the money and that they needed the money to pay their bills with; they were owing bills for Tunis and Buckhorn at that time.

Q.47 Do you remember when this conversation took place?

A. I could not say, sir.

Q.48 Was it not before Christmas, 1901?

A. I think it was just before Christmas. My recollection is not clear on that point, but I think it was.

Q.49 I wish you would try now to refresh your memory as to the time these words were spoken, as it is important?

A. I think it was just before Christmas, 1901.

Q.50 Are you quite certain that she used the words "we are owing money at Buckhorn?"

A. I am.

Q.51 Did she say we are owing money for goods which have been sent or shipped to Buckhorn?

A. We are owing money for goods at Buckhorn and Tunis. Now whether she said goods shipped to Buckhorn or goods bought for Buckhorn, I don't remember. She simply said we are owing money for goods at Buckhorn and Tunis. That is the substance of what she said.

Q.52 If she owed for over-alls, a part of which she had sent to her son at Buckhorn, she would be owing for goods at Buckhorn and Tunis would she not?

A. Yes sir, certainly.

Further this deponent saith not.

*one*

The deposition of Mrs. A. E. Winborne a witness for the defendants taken at the office of Robert W. Withers at 2:30 o'clock P. M. on Wednesday, March 1st 1905. Notice of time and place of taking said testimony being waived.

*also  
A. E. B.  
W. H.  
R. E. Baine  
S. H. Winborne*

Present Mr. James L. McLemore counsel for plaintiff and Mr. Robert W. Withers counsel for defendants.

*Colby*

Mrs. A. E. Winborne being duly sworn deposes as follows:

Q.-Mrs. Winborne it has been stated by John L. Gay that you told him that J. R. Winborne, A. E. Winborne and H. O. Winborne were partners at Tunis under the firm name of H. O. Winborne & Co., is that true?

A.-No sir.

Q.-Mr. Gay also states that you told him that H. O. Winborne was a member of the firm of A. E. Winborne & Company, was there ever such a name as A. E. Winborne & Company?

A.- No sir.

Q.-Mr. John L. Gay also states that you told him that H. O. Winborne had opened a business at Buckhorn and that you and your husband were partners with him there. What have you to say about that.

A.-I never told Mr. Gay anything of the kind.

Q.-Mr. Gay states that just before or just after Xmas. 1901 before the trial at Winton that you came out of the store of H. O. Winborne & Co., at Tunis, and stopped him in the road in front of that store and told him that you needed money and had to have it as you and your husband and H. O. Winborne were running business at Buckhorn and needed the money to pay bills. Please state what you know about this.

A.-I never mentioned such a thing to Mr. Gay in my life.

Q.-Are you sure that no such conversation occurred?

A.- I certainly am.

Q.-What goods, if any, were shipped from the Tunis store in January or February 1902 to Buckhorn?

A.- Some store fixtures that I let Holly have and some overalls that is all that I know of.

Cross examination waived.

Signature waived.

*omit*  
Mr. A. C. Butler being duly sworn deposes as follows:

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

A.-A. C. Butler, Buckhorn, Virginia, 46 the 5th day of April, farming. I know the parties to this suit.

Q.-Did you live in Buckhorn while Holly Winborne kept store there, that is from January to July 1902.

A.- Yes sir.

Q.-Did you have any business dealings with Mr. Winborne?

A.- Yes sir, I have traded with him right much.

Q.-Please state in what name Mr. Winborne did business.

A.- H. O. Winborne, as well as I remember.

Q.-Did you ever hear of his having any partners in that business?

A.- No sir.

Cross examination waived.

Signature waived.

*omit*  
Mr. A. W. Ballard being duly sworn deposes as follows:

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

A.-A. W. Ballard, 52 in July, Buckhorn, farming and I do know the parties to this suit.

Q.-Did you live at Buckhorn in January 1902 to July 1902?

A.- Yes sir.

Q.- How far was your store from Mr. Winborne's store?

A.- Just across the road, I don't think it is over thirty five or forty feet.

Q.-In what name did Mr. Winborne do business at Buckhorn?

A.-All that I can answer to that is that he would come over there and if he got anything I always charged it to H. O. Winborne. I did not know the style of the firm's name I had nothing at all to do with it.

Q.-Did you ever hear of his having any partners in his business.

A.-Not after he came up there I did not. I knew nothing about his business at Tunis.

Cross examination waived.

Signature waived.

Mr. Mills H. Holland being duly sworn deposes as follows:

Q.-Please state your name, age, residence, occupation and do you know the parties in this suit?

A.-Mills H. Holland, thirty, Buckhorn, farming and merchandising I know the parties to this suit.

Q.-Did you ever have any business dealings with Mr. Winborne while keeping store at Buckhorn.

A.-Yes sir:

Q.-Will you please state in what name he did business at that time?

A.- H. O. Winborne.

Q.-Did you ever hear of his having any partners in his business?

A.-I never did.

Cross examination by Mr. McLemore.

Q.-In what year was Mr. Winborne doing business at Buckhorn.

A.- 1903 I think, I can't say what year it was I wont be positive about that. Mr. Winborne boarded with me and he always paid his bills and always gave his receipts as H. O. Winborne. I was Post Master there and his mail was H. O. Winborne and nothing else,

That is all connection that I had at all I could not tell how he was doing business over there.

Q.- How long was he doing business there?

A.- He was doing business there about eighteen months.

Signature waived by consent.

Mr. Baines being duly sworn deposes as follows:

Q.-Please state you name, age, residence, occupation and do you know the parties in this suit?

A.-R. L. Baines, two miles from Buckhorn, farming, I know the parties to the suit.

Q.-Mr. Baines did you have any business dealings with Mr. Winborne when he was doing business at Buckhorn.

A.-I did , sir, a little just like I do with every body.

Q.-Did you both buy and sell to him?

A.- I did a little.

Q.- In what name did he do business?

A.- H. O. Winborne.

Q.-Did you ever hear of his having any partners?

A.- I did not.

Q.- Did you, or your brother, own the store in which he did business ?

A.-My brother.

Q.-Do you know from whom he rented the store?

A.-Yes sir I can tell you that I sold out to him before he rented it to Mr. Winborne I suppose he rented it to H. O. Winborne. I did business with him only as H. O. Winborne .

By Mr. McLemore exception by plaintiff's counsel to the latter part of this answer because it states a supposition and the witness is not speaking from memory and knowledge.

Cross examination by Mr. McLemore.

Q.-If I understand you correctly your dealings with Mr. Winborne were confirmed to purchases you made in the store.

A.- Yes sir that is right.

Q.-You did not know from whom he bought, do you?

A.-I knew nothing about that.

*omit*  
Mr. J. T. Winborne being duly sworn deposes as follows:

Q.- Please state your name, age, residence, occupation and do you know the parties to this suit.

A.-J. T. Winborne, one mile from Buckhorn, lumber business, 28 years, I know the defendants.

Q.-What relation are you to H. O. Winborne?

A.- First cousin.

Q.-Please state what business connection you had with the business of H. O. Winborne at Buckhorn?

A.-I used to buy from him and give my men orders for him and give him receipts and he would give me receipts.

Q.- Who kept his books?

A.- I do not know sir.

Q.-Did you not help him sometimes on his books?

A.-No sir I did not.

Q.-Mr. Winborne from your dealings with H. O. Winborne please state how he did business so far as your knowledge goes.

A.- H. O. Winborne.

Q.-Did you ever hear or know of his having any partners in this business.

A.- No sir.

Cross examination by Mr. McLemore.

Q.-Do you know anything about the partnership business?

A.- No sir.

Signature waived by consent.

Present James L. McLemore for complainant.

Robert W. Withers for defendant.

*only*  
Benjamin D. Bains being duly sworn deposes as follows.

Q.-State your name, age, residence and occupation and do you know W. B. Ferguson and H. O. Winborne?

A.- Benjamin D. Bains, 40 years, Nansemond County, occupation farmer, I know the parties.

Q.-Mr. Bains do you remember when Mr. Winborne was in business at Buckhorn, if so, please state in what name he did business.

A.-I rented him the house and I rented it to H. O. Winborne and that is all that I ever knew. He was the man that paid the rent. H. O. Winborne was the only name of the firm as I know of.

Q.-Do you know of any partners Mr. Winborne had in business with him?

A.-No sir I never heard of any.

Cross examination waived.

Signature waived.

*Not Only This Clerk*

The depositions of J. R. Winborne, A. E. Winborne and H. O. Winborne, taken before me Robert W. Withers a Notary Public in the County of Nansemond and State of Virginia. Notice to take said depositions being waived by plaintiff and defendant, at the office of Robert W. Withers in the Town of Suffolk on the 31 day of March 1903 between the hours of 9 o'clock A. M. and 6 o'clock P. M., to be read in evidence in behalf of the defendants in a certain suit depending in the Circuit Court of Nansemond County wherein W. B. Ferguson & Co are plaintiffs and J. R, A. E. and H. O. Winborne are defendants.

Present: McLemore & Corbitt Counsel for plaintiff and Robert W. Withers Counsel for defendant.

Deposition of John R. Winborne, who being duly sworn  
- Appellants witness - is as follows:

- Copy 1 Q. What is your name, age, residence and occupation?  
A. John R. Winborne, 52, Elizabeth City, N. C. merchant.
- 2 Q. Did you ever live in Tunis N. C? A. Yes sir.
- 3 Q. What was your business in Tunis? A. Mercantile.
- 4 Q. Did you have a partner, if so, who? A. Yes sir H. O. Winborne.
- 5 Q. Is this partnership still in existence? A. No sir.
- 6 Q. When and how, did the partnership dissolve? A. I bought out H. O. Winborne in December 1901.
- 7 Q. What did Mr. H. O. Winborne then do? A. He went in mercantile business at Buckhorn or Purvis.
- 8 Q. Under what firm name did he operate? A. H. O. Winborne.
- 9 Q. Were you a partner either active or silent in that business?  
A. No sir I certainly was not.
- 10 Q. Did you have any interest in it whatever? A. Not one cent sir.
- 11 Q. Did you in any manner hold yourself out as a partner? A. No sir.
- 12 Q. Did you share any of the profits? A. No sir I certainly didn't.
- 13 Q. Did you buy any goods for the Buckhorn house? A. No sir.
- 14 Q. Did you sell any goods for that house? A. No sir.
- 15 Q. Messrs. W. B. Ferguson & Co have brought a suit against you, your wife and H. O. Winborne charging that all of you were partners in the business of H. O. Winborne, or H. O. Winborne & Co doing business at Buckhorn Va., between January 1902 and the summer of 1902. Please state <sup>what</sup> if any connection you had with this firm. A. None whatever.
- 16 Q. Do you own any real estate in Nansemond County. A. No sir.
- 17 Q. Are you interested in the property of your wife which has been attached by W. B. Ferguson & Co. A. No sir.

18 Q..Are you interested in the personal property formerly used by H. O. Winborn at Buckhorn and which has been attached in the hands of W. S. Cross by Ferguson? A. No sir.

19 Q. When Mr. H. O. Winborne began business and came to Suffolk to buy goods of W. B. Ferguson & Co did you accompany him? A. Yes sir that is I met him here.

20 Q. Please state what occurred in the store of W. B. Ferguson & Co? A. We went into Mr. Ferguson's store and Mr. Cross met us and I told him that Holly wanted to engage in business at Buckhorn and he says well I sold him at Tunis and of course I will have to do it there and that is all that passed between us that I know of.

21 Q. Did H. O. Winborne make his arrangements for credit with Mr. Cross that day? A. Yes sir.

22 Q. Was Mr. Ferguson present? A. No sir I am not certain that I saw him that day, but if I saw him, it was after Holly had purchased the goods.

23 Q. Did you accompany your son to Ferguson's store after this? A. I am not certain, I don't recollect whether I did or not.

24 Q. Do you remember seeing Mr. Ferguson again? A. No sir I do not, I am not certain.

25 Q. Did you have any transaction with Mr. Ferguson which made it necessary to tell him that your business at Tunis was not the same as Mr. H. O. Winborne's business at Buckhorn, if so, what and how? A. Yes sir I owed Mr. Ferguson a little and I stopped in there to pay him and I asked him for my account and he turned to it and told me what it was and I said Mr. Ferguson there is something wrong about it and he looked over it and called one of his clerks there and they found out how it was, they had put Holley's accounts with mine, then I took my book out and called over the several purchases and payments and he recalled that it was wrong that it was one of Holley's accounts, he changed it then and put it to H. O. Winborne

Buckhorn and I paid him my account in full.

26 Q. Did you tell Mr. Ferguson then that you were not interested in H. O. Winborne? A. Yes sir, I told him this that I had no business with H. O. Winborne & Co at Tunis that it was a separate firm from H. O. Winborn at Buckhorn.

27 Q. Have H. O. Winborne and A. E. Winborne ever been partners? A. No sir.

Cross examination by Mr. McLemore.

28 Q. Who composed the business at Tunis? A. H. O. Winborne and J. R. Winborne.

29 Q. Was Mrs A. E. Winborne ever interested directly or indirectly in the Tunis firm? A. No sir.

30 Q. What time did the partnership between H. O. Winborne and J. R. Winborne cease? A. Some time in December I don't recollect some time in 1901.

31 Q. Were you and Mrs. A. E. Winborne present at a trial in Winton in which H. O. Winborne & Co brought action against John L. Gay? A. No sir.

32 Q. Who was present as to the interested parties? A. There was no one, except one or two witnesses I had and I don't recollect who they were now.

33 Q. Were you present? A. Yes sir.

34 Q. Was your son present? A. No sir.

35 Q. Where was the trial? A. It was in Judge Coopers office.

36 Q. Mrs. Winborne was not present? A. No sir.

37 Q. Did you not then and there state in the presence of the justices Mr. John L. Gay and Mr. John Holloman that your firm at Tunis was composed of yourself and your wife? A. No sir I did not.

38 Q. Did you not tell Mr. W. B. Ferguson in his store that you, your son and your wife were partners? A. No sir I did not, nor can I believe that Mr. Ferguson will make any such statement.

39 Q. Did you not later or about the same time tell Mr. Frank Holliday that the partnership was composed of the three last names? A. I never mentioned it to Mr. Frank Holliday? I don't even know him, if I was to see him now, I wouldn't know him.

40 Q. Witness is here shown a note dated July 7, 1902 payable 30 days after date to W. B. Ferguson & Co for \$366.05 and signed H. O. Winborne & Co and asked who signed the note and who composed the firm? A. I certainly didn't sign it, if there was any firm I didn't know anything about it, if there was ever any firm, I don't know anything about it.

41 Q. Do you know the handwriting attached to this note? A. I do not know, it favors Holley's, but I couldn't swear to it.

42 Q. Do you know who composed the firm of H. O. Winborne & Co at Tunis? A. In 1901 H. O. Winborne and J. R. Winborne composed the firm but who composed it at Buckhorn I do not know.

43 Q. Who was ~~the~~<sup>in</sup> actual charge at Tunis before your son came to Buckhorn? A. H. O. and J. R. Winborne.

44 Q. When was A. E. Winborne in charge at Tunis? A. 1900

45- Q. How did her interest terminate? A. We bought her out.

46 Q. While she was the owner of the business, who conducted and managed the same for her? A. I, myself.

47 Q. Had you the authority from her to buy goods and sign her name to notes? A. Yes sir.

48 Q. What was the firm name at that time? A. A. E. Winborne & Co.

49 Q. When you bought out H. O. Winborne in December 1901 how much did you pay for his interest? A. I don't recollect the books show but I don't recollect.

50 Q. Was it as much as \$500.00? A. No sir.

51 Q. Can you give an idea of the approximate amount? A. No sir.

52 Q. Do I understand from your testimony that you have had authority and still have in matters relating to Mrs. A. E. Winborne's property interest to represent her as her agent? A. Well I do to a certain extent.

Re-direct examination.

53 Q. Witness here shown note introduced by plaintiff dated July 7, 1902 and asked if H. O. Winborne & Co at Tunis owed Ferguson & Co \$366.05 at that time? A. No sir.

54 Q. Did you owe him anything at that time? A. No sir.

55- Q. Do you owe him any thing now? A. No sir not one penny.

56 Q. Was this note given in any debt contracted by or for goods used in the business of H. O. Winborne & Co at Tunis A. No sir

Further than this the deponent sayeth not.

Signature waived by consent.

Mrs. A. E. Winborne, being duly sworn deposeth and sayeth.

1 Q. Please state your relation to J. R. Winborne and H. O. Winborne? A. H. O. Winborne is my son, and J. R. Winborne is my husband.

2 Q. Has J. R. Winborne any interest in your property in Nansemond County? A. No sir.

3 Q. How did you get this property, from whom? A. I bought it from my father.

4 Q. Were you ever a partner in business with H. O. Winborne either at Tunis or Buckhorn? A. No sir.

5 Q. Were you a partner of the firm of H. O. Winborne & Co at Tunis after December 1901? A. No sir I wasn't any partner in 1901.

6 Q. Did you hold yourself out to Mr. Ferguson as a partner on any manner? A. No sir.

7 Q. Did you ever see Mr. Ferguson or write him any letters with reference to the business of H. O. Winborne or H. O. Winborne & Co? A. No sir, I never wrote him a letter in my life.

8 Q. Do you give your husband authority to say directly or indirectly that you were a partner? A. No sir.

9 Q. Do you owe Mr. Ferguson anything? A. No sir.

10 Q. To whom does the personal property now held by Mr. Cross and formerly used by H. O. Winborne at Buckhorn belong? A. To me.

11 Q. Did you sign the note exhibited here in evidence? A. No sir.

12 Q. Did you know of its existence? A. No sir. I didn't know anything at all about it.

13 Q. State what if any connection or interest you had in the firm of H. O. Winborne at Buckhorn? A. I did not have any.

Cross examination by Mr. Corbitt.

14 Q. Mrs. Winborne, were you present at a trial of a suit brought by H. O. Winborne & Co against John L. Gay at Winton N. C? A. No sir I was not .

15 Q. There was such a suit there ~~ee~~ was there not? A. Yes sir.

16 Q. Have you authorized your husband to tend to your affairs for you? A. Yes sir.

17 Q. Whatever he says that you would authorize him to do, you will agree it to be true be willing to swear by it? A. Yes sir, but I would use my own judgment about it.

18 Q. If your husband were to say that you had authorized him to make a certain transaction which he made in your name, wouldn't you consider it ~~binding~~ <sup>binding</sup> for you? <sup>not</sup> A. Unless I had told him so

19 Q. You wouldn't consider his statement that you had told him so ~~bidding him~~ <sup>binding on you</sup> to stand by what ~~you~~ <sup>he</sup> had done? A. No sir. I would expect him to ask me about it first.

Further the deponent sayeth not.

Signature waived by consent.

H. O. Winborne, being duly sworn deposeth and sayeth  
as follows:

1 Q. What is your name, age, residence and occupation, and are  
you a party to this suit. A. H. O. Winborne 24 Buckhorn farm  
ing yes I am a party to this suit.

2 Q. Were you in business at Buckhorn, and did you buy goods  
from Mr. W. B. Ferguson & Co? A. Yes sir.

3 Q. When were you in business at Buckhorn? A. From the middle  
of January to some time in July 1902.

4 Q. Who were your partners at Buckhorn? A. Didn't have any.

5 Q. Under what firm name was the business run? A. H. O. Win-  
borne.

6 Q. Were these your licenses procured from the State? A. Yes  
sir.

Two licenses here produced marked XX.

7 Q. These licenses appear to have been gotten out on May 1,  
1902 and to expire April 30, 1903

were you not in business before May 1, 1902? A. Yes sir.

8 Q. Have you the licenses before May 1, 1902? A. Yes sir.

9 Q. Can you exhibit them? A. Yes sir.

Licenses here exhibited marked XXX.

License permitted to be filed by consent of counsel hereafter.

10 Q. Did you have license for other business than as a merchant  
and for tobacco? A. Yessir, liquor license.

11 Q. In whose name did you apply for these licenses? A. H. O.  
Winborne.

12 Q. Who ran the business at Buckhorn? A. H. O. Winborne.

13 Q. Did either A. E. Winborne or J. R. Winborne have any in-  
terest in this business? A. No sir.

14 Q. Did either of them have any management of the business?  
A. No sir.

15 Q. Did either of them buy any goods for the business? A.  
No sir.

16 Q. Have you any interest in the property standing in the name  
of A. E. Winborne situated in Hansemond County? A. No sir.

17 Q. At the time of your petition in bankruptcy did you owe W. B. Ferguson & Co? A. Yes sir.

18 Q. Was this debt by open account or by note? A. By <sup>both</sup> note I think.

19 Q. Do you recall for what amount the note was? A. I don't remember right now.

20 Q. Witness here shown note introduced in testimony for \$366.05 A. Yes sir.

21 Q. This note is signed H. O. Winborne & Co for whose debt was it given? A. H. O. Winborne.

22 Q. Why was it signed H. O. Winborne & Co? A. Mr. Ferguson says to me sign this H. O. Winborne & Co I signed it H. O. Winborne he says put Co to it I said to him there is no Co to this firm well he says there is no Co to mine, but if you sign Co to it, it will sound stronger and I told him there is no business in that, signing Co to a business of that kind unless there is one and he kept on insisting that I sign Coto it saying that the bank wouldn't take it otherwise until I signed it.

23 Q. Did you set forth this note as a debt of H. O. Winborne in a schedule in your petition <sup>in</sup> of bankruptcy? A. Yes sir.

24 Q. How, prior or before this note was made, did Mr. Ferguson send your bills, in the name of H. O. Winborne or H. O. Winborne & Co? A. Some of the <sup>bills</sup> ~~notes~~ were marked H. O. Winborne & Co but he sent the goods in the name of H. O. Winborne.

25 Q. When you began business in Puckhorn, did you come to Suffolk to buy goods of Ferguson & Co and if so who came with you? A. I don't remember whether any one was with me or not .

26 Q. Was not your father J. R. Winborne with you? A. Yes sir, I think he was.

27 Q. Do you recall with whom you made your arrangements to buy goods from Ferguson & Co? A. Mr. Will Cross.

28 Q. Do you remember seeing Mr. Ferguson in the store that day? A. I can't say whether I saw him or not.

29 Q. I understand that you went to Norfolk after you had been in Ferguson's place is that correct? A. Yes sir.

30 Q. Did you come back to Suffolk afterwards? A. Yes sir.

31 Q. Did you go to Ferguson's store after you came back from Norfolk? A. I don't remember whether I did or not.

32 Q. Did you and your father have any conversation with Mr. Ferguson about the purchase of goods and were you not together? A. I don't remember whether we saw Mr. Ferguson or not I don't think we did.

33 Q. If Mr. Ferguson states that he had a conversation with you and your father when you first came to purchase goods of him and your father stated that the business at Buckhorn was owned and run by the same people who had before that time owned the business at Tunis under the firm name of H. O. Winborne & Co what have you to say? A. He didn't tell him so in my presence and I don't think he ever told him so.

34 Q. Are you positive that no such conversation occurred in your presence? A. Yes sir.

35 Q. As I understand your testimony you say that your father was with you when you bought goods of Ferguson and that you bought from Mr. Cross and made your arrangements with him for credit and that you do not remember whether or not you even saw Mr. Ferguson that day, is that correct? A. Yes sir.

Cross examination by Mr. Corbitt.

36 Q. When did you fail in business at Buckhorn? A. In July 1902

37 Q. What time in July? A. I don't know, about the 23 I think.

38 Q. When was it you went into bankruptcy? A. That is what I meant.

39 Q. You testified that you signed this note for \$366.05? A. Yes sir.

40 Q. Why was it you signed H. O. Winborne & Co? A. Mr. Ferguson told me that it would make the firm sound stronger if I would sign it Co, he said there wasn't any Co to his business but he signed Co so as to make it stronger he said he didn't know whether the bank would take it without signing Co or not,

I told him that there wasn't any business about signing Co to H. O. Winborne, when there wasn't any Co. to it, and he said there wouldn't be any trouble about it that he would rather I would sign Co. because he was afraid the bank would not take it and he kept insisting on it until I signed it.

Q. Did he use the word stronger? A. Yes sir.

Q. What did you understand him to mean by making it stronger?

A. I thought he meant this, that the bank wouldn't take it that maybe there was two men, or something like that I don't know what else he could have thought.

Q. In other words, a bank had rather take a note H. O. Winborne & Co, than H. O. Winborne, is that what you understand by it? A. Yes sir.

Q. Is that your idea? A. I don't see what else he could have meant, unless he was trying to get me in a snap.

Q. If you were a banker, lending money on a note signed H. O. Winborne & Co. would you not make inquiry as to <sup>why</sup> ~~the one~~ the Co was? A. I don't know how it would be in the bank.

Q. If you were not in a bank and were going to lend money, wouldn't you inquire as to the one the Co. was? A. If I had been receiving notes with no Co. to the same name, I should not care anything about, the bank has been receiving my notes why should they inquire about the Co.

Q. Don't you think that the very fact of Co. being added to your name would make the bank inquire who the Co. was when you had heretofore been signing H. O. Winborne? A. I don't know whether they would or not.

Q. What would you do, if you were lending money under those circumstances? A. I hadn't thought much about it, if the notes had been alright, I don't know whether I should ask anything about it or not.

Q. In other words, you would lend money without ever inquiring as to who the Co. was? A. It would depend on how I first loaned it, if the first money I loaned was alright, and there wasn't any trouble over that, I don't think I should fear any more.

Q. How then, Mr. Winborne, would Co. being added make it stronger? A. Well people have different views about things, I don't know as it would make it any stronger if two men were to get together that didn't have anything than one that did have something, and so far as my signing Co. when there wasn't any Co. that didn't make it any stronger, but yet he thought it did.

Q. You think then, that Co. being added to a mans name, would not make his note any stronger with you? A. It would depend if it suited that man, it would be just the same as if he put three Cos. to it.

Q. Would you not prefer to have two men reliable on a note rather than one reliable? A. It wouldn't make much difference with me, if he was a good reliable man.

Q. Don't you know Mr. Winborne, that people lending money always want as much security as possible? A. Yes sir.

Q. Well then, don't you know that if you were lending money you would rather have two men on a note than one? A. Well I had just as soon have two I reckon, if they were good men.

Q. Wouldn't you prefer to have two? A. I just now said that it wouldn't make much difference with me.

Q. You think then that most anyone would just as soon have had the note signed H. O. Winborne as H. O. Winborne & Co when it was supposed that the Co meant somebody? A. Well I don't know whether they would or not.

Q. I understand you to say, Mr. Winborne, that if the note was signed H. O. Winborne & Co, and the Co. did mean somebody else then you would just as soon have the note without the Co. as with it? A. If they had been alright before, yes sir.

Q. In other words, you would just as soon have one good man as two on a note? A. Yes sir, if he had been dealing with me sometime and he was alright I shouldn't ask him for any other man to sign it.

Q. If you were lending money on some one elses note that I presented to you for a loan would you not prefer to have two

names on the original note instead of one? A. If he had treated me alright from the first, I shouldn't ask for another man.

Q. Don't you yourself Mr. Winborne think that signing the note H. O. Winborne & Co would make it appear to be stronger ~~than~~ when it was signed simply H. O. Winborne? A. It wouldn't sound so to me, I haven't other peoples minds and there thoughts about things.

Q. Would it sound stronger to you to have a note signed John Jones & Co, or simply John Jones? A. If I knew John Jones knew him to be an alright man and had dealings with him, he had always shown up alright to me, and his Co. whoever he might be, I knew him and he was alright, why certainly it would make me feel just as I would know that I was alright then.

Q. Would it make you feel better? A. If I was feeling alright about it, I don't know whether it would make me feel any better or not.

Q. Mr. Ferguson stated that <sup>to</sup> sign it H. O. Winborne & Co, would make it appear stronger and therefore, the bank had rather take it, then Mr. Ferguson knew there was no Co.? A. Yes sir.

Q. Then when Mr. Ferguson said signing it H. O. Winborne & Co would make it sound stronger, and the bank would rather have it on so signed he knowing there was no Co. would he not be making a fraud upon the Bank? A. I don't know what you might call it.

Q. What would you call it? A. I don't know as I have a right to spend my opinion as to what I should call it.

Q. If you were to do a thing of the kind, how would you feel about it? A. I should have to do that before I should know how I did feel I have never done anything of the kind.

Q. At the same time Mr. Winborne you say you did sign the note because Mr. Ferguson told you it would make it stronger? A. Yes sir and he said that there wouldn't be any trouble over it, I told him that there wasn't any business in signing Co. when there was no Co.

Q. Do you think that your signing H. O. Winborne & Co when there was no Co. was right in as much as Mr. Ferguson had told you that he wanted it signed H. O. Winborne & Co because the bank had rather have it? A. He must have been trying to get me in some trouble or rather I didn't know it was anything wrong.

Q. If then Mr. Ferguson wanted to deceive the bank by making them think there was a Co. when there wasn't any you could see nothing wrong in signing it H. O. Winborne & Co? A. I had nothing to do with what Mr. Ferguson done.

Q. But didn't he tell you why he wanted it signed H. O. Winborne & Co? A. He said it would make it sound stronger.

Q. So knowing that he said the bank had rather have it signed that way, you still see that you did nothing wrong. In signing it H. O. Winborne & Co. when there was no Co? A. No sir I didn't think I was doing anything wrong.

Q. How did you say Mr. Ferguson shipped goods to you? A. H. O. Winborne.

Q. When did he ship them H. O. Winborne & Co? A. I don't remember his ever shipping them that way the goods were marked H. O. Winborne.

Q. Did he write to you H. O. Winborne & Co? A. I think he sent one or two bills H. O. Winborne & Co, he never wrote any letters H. O. Winborne & Co.

Q. Mr. Winborne, you stated that you didn't think your father ever told Mr. Ferguson that the same people constituted the firm in Buckhorn as constituted it in North Carolina, do you know your father never told Mr. Ferguson so? A. Yes sir.

Q. How do you know it? A. Well I know he didn't tell him so in my presence and I don't see why he should tell him so out of my presence. He had nothing to do with my business, there was no reason in the world why he should tell him any such thing.

Q. All you know is, that your father never told Mr. Ferguson so in your presence? A. Yes sir.

Q. Did you ever tell anybody that there was any other member of the firm except yourself? A. No sir.

Re-direct Examination.

Q. Did W. B. Ferguson & Co. refuse to ship you goods as H. O. Winborne individually? A. No sir.

Q. Do I understand that he did ship goods to you as H. O. Winborne? A. Yes sir.

Q. And sent you the bills as such? A. Yes sir.

Q. And some of those bills are included in this note? A. Yes sir.

Q. Please state whether you know of any visit made by your father alone to Ferguson's store after you began business in Buckhorn? A. I remember last spring that I ordered goods from Mr. Ferguson and they didn't come when I expected them then my father had been over to the farm and come back to my store and was on his way to Tunis I asked him if he would stop in Mr. Fergusons passing through Suffolk and ask him if he had shipped those goods and if he hadn 't to tell him to ship them, that I needed them.

Q. Was this after you had begun business? A. Yes sir

Q. Can you state about how long you had been in business then? A. I reckon two or three months.

Q. Did I understand you to say that when you signed the note, here in evidence, that you first signed it H. O. Winborne, and afterwards on the request of Ferguson added the words & Co? A. Yes sir.

Further than this the deponent saith not.

Signature waived by consent.

I Robert W. Withers, a Notary Public in the County of Nansemond and State of Virginia, do hereby certify that the foregoing depositions of John R. Winborne A. F. Winborne and H. O. Winborne were duly taken and sworn to before me at the place and time mentioned therein and in the caption thereto, pursuant to agreement of parties. In witness whereof, I have hereunto set my hand and seal on this 31 day of March, 1903, in the County aforesaid.

Time employed three hours.

*Robert W. Withers*  
Notary Public

*My term of office expires April 6-1904.*

Exhibits K X X = Ferguson & Hinton

STATE OF VIRGINIA.

APPLICATION FOR A LICENSE,  
OTHER THAN LIQUOR.

omit this

Nansemond County (or Corporation).  
January 2, 1902  
Name of Applicant A. O. Winborn  
Residence of Applicant Buckhorn Va  
Nature of Business, Employment or Profession Tobacco & Co  
Place where it is Proposed to be Prosecuted Buckhorn Va  
Amount of Tax Prescribed by Law One and 67/100 dollars

TREASURER'S CERTIFICATE.

Office of Treasurer of the County of Nansemond  
January 2, 1902  
I, W. A. King Depy, Treasurer of the County  
(or City) aforesaid, do certify that A. O. Winborn  
has deposited with me the amount required by law to prosecute the within privilege  
in gold or silver coin, United States Treasury notes, or National Bank notes,  
One and 67/100 dollars

Amount required \$1.67  
fee 75  
\$2.42

W. A. King Depy  
Treasurer.

# COMMISSIONER'S ENDORSEMENT.

Office of COMMISSIONER OF REVENUE,

Hausman County (or Corporation),

January 2nd, 1902

I find the within application in due form and accompanied with

the certificate of the Treasurer of the County (or Corporation) that the sum of

One \$67.00 Dollars

in gold or silver coin, Treasury notes, or National Bank notes, has been deposited with him.

Nature of the License Tobacco Cigars

License Commences Jan'y 2nd 1902

License Expires April 30th 1902.

W. J. Oliver  
Commissioner of Revenue.

NOTE.—The original application shall be filed by the Commissioner in his office, and a duplicate thereof delivered to the applicant. Such duplicate shall constitute a license to prosecute the business, profession, or employment therein named unless it be a business for which a license can be granted only on a certificate of a court, in which case the applicant, upon obtaining such certificate, shall be entitled to the license.

STATE OF VIRGINIA.

APPLICATION FOR A LICENSE,  
OTHER THAN LIQUOR.

Norfolk County (or Corporation).

January 2, 1902

Name of Applicant H O Winborn

Residence of Applicant Buckhorn Va

Nature of Business, Employment or Profession Merchant

Place where it is Proposed to be Prosecuted Buckhorn Va

Amount of Tax Prescribed by Law Five dollars

TREASURER'S CERTIFICATE.

Office of Treasurer of the County of Norfolk

January 2, 1902

I, W. A. King, Treasurer of the County  
(or City) aforesaid, do certify that H O Winborn  
has deposited with me the amount required by law to prosecute the within privilege  
in gold or silver coin, United States Treasury notes, or National Bank notes,  
Five dollars

Amount required \$ 5.00  
for 75  
\$5.75

W. A. King  
Treasurer.

# COMMISSIONER'S ENDORSEMENT.

Office of COMMISSIONER OF REVENUE,

Nassau County (or Corporation),

January 2, 1902

I find the within application in due form and accompanied with  
the certificate of the Treasurer of the County (or Corporation) that the sum of

Five Dollars

in gold or silver coin, Treasury notes, or National Bank notes, has been deposited  
with him.

Nature of the License Merchants

License Commences January 2 1902

License Expires April 30 1902

W. J. Oliver  
Commissioner of Revenue. Thug

NOTE.—The original application shall be filed by the Commissioner in his office, and a duplicate thereof delivered to the applicant. Such duplicate shall constitute a license to prosecute the business, profession, or employment therein named unless it be a business for which a license can be granted only on a certificate of a court, in which case the applicant, upon obtaining such certificate, shall be entitled to the license.

Internal Revenue Service,  
Second District of Virginia,  
Deputy Collector's Office,

Norfolk, Va. Feby. 14th. 1902., 190...

Mr. H. O. Winborne,

Buckhorn, Va.

Sir: I have your money order for \$10.42 for R.L.D., license for 5 months ending June 30th. 1902. Please sign enclosed Form II before a notary public <sup>or</sup> Justice of Peace and forward same promptly to me when a special tax stamp will be sent you.

Respectfully Yours,

P. H. Sarkin.

Deputy Collector.

Officers of Internal Revenue must fill out the indorsement and brief on the back of each letter to the Department.

*[Faint, illegible handwriting]*

XX

STATE OF VIRGINIA.

APPLICATION FOR A LICENSE,  
OTHER THAN LIQUOR.

Gausemond County (or Corporation).  
May 1<sup>st</sup>, 1902.  
Name of Applicant H. O. Winborne  
Residence of Applicant Buckhorn  
Nature of Business, Employment or Profession Merchants  
Place where it is Proposed to be Prosecuted Buckhorn Baines Store  
Amount of Tax Prescribed by Law Five (5) dollars

TREASURER'S CERTIFICATE.

Office of Treasurer of the County of Gausemond  
May 1<sup>st</sup>, 1902.  
I, S. J. Ellis, Treasurer of the County  
(or City) aforesaid, do certify that H. O. Winborne  
has deposited with me the amount required by law to prosecute the within privilege  
in gold or silver coin, United States Treasury notes, or National Bank Notes,  
Five Dollars

Amount required \$ 5.00  
73  
75.75

S. J. Ellis  
Treasurer.

## COMMISSIONER'S ENDORSEMENT.

Office of COMMISSIONER OF REVENUE,

Wassenaar County (or Corporation),

May 1<sup>st</sup> 1902.

I find the within application in due form and accompanied with  
the certificate of the Treasurer of the county (or corporation) that the sum of

Five (5) Dollars

in gold or silver coin, Treasury notes, or National Bank notes, has been deposited  
with him.

Nature of License

Merchants'

License Commences

May 1<sup>st</sup>

1902.

License Expires

April 30<sup>th</sup>

1903.

W. J. Oliver

Commissioner of Revenue.

NOTE.—The original application shall be filed by the Commissioner in his office, and a duplicate thereof delivered to the applicant. Such duplicate shall constitute a license to prosecute the business, profession, or employment therein named unless it be a business for which a license can be granted only on a certificate of a court, in which case the applicant, upon obtaining such certificate, shall be entitled to the license.

STATE OF VIRGINIA.

APPLICATION FOR A LICENSE,  
OTHER THAN LIQUOR.

*Wauseon* County (or Corporation).

, 1902.

Name of Applicant *H. O. Winborne*

Residence of Applicant *Buckhorn*

Nature of Business, Employment or Profession *Tobacco*

Place where it is Proposed to be Prosecuted *Buckhorn* *Baines Store*

Amount of Tax Prescribed by Law *Five dollars*

TREASURER'S CERTIFICATE.

Office of Treasurer of the *County* of *Wauseon*  
*May 1<sup>st</sup>*, 1902.

I, *S. J. Ellis*, Treasurer of the County  
(or City) aforesaid, do certify that *H. O. Winborne*

has deposited with me the amount required by law to prosecute the within privilege  
in gold or silver coin, United States Treasury notes, or National Bank Notes,  
*Five Dollars*

Amount required \$ *5<sup>00</sup>  
75*  
*5.75*

*S. J. Ellis*  
Treasurer.

## COMMISSIONER'S ENDORSEMENT.

Office of COMMISSIONER OF REVENUE,

*Waukesha* County (or Corporation),

*May 1<sup>st</sup>*

1902.

*I find the within application in due form and accompanied with*

*the certificate of the Treasurer of the county (or corporation) that the sum of*

*Five*

*(5)*

*Dollars*

*in gold or silver coin, Treasury notes, or National Bank notes, has been deposited with him.*

*Nature of License*

*Tobacco*

*License Commences*

*May 1<sup>st</sup>*

1902.

*License Expires*

*April 30*

1903.

*W. J. Oliver*

Commissioner of Revenue.

NOTE.—The original application shall be filed by the Commissioner in his office, and a duplicate thereof delivered to the applicant. Such duplicate shall constitute a license to prosecute the business, profession, or employment therein named unless it be a business for which a license can be granted only on a certificate of a court, in which case the applicant, upon obtaining such certificate, shall be entitled to the license.

Lumpis No April 15-1701  
Gentlemen your letter  
of the day received. in  
reply I will say just  
file the order until  
until we can get a  
Statement to send  
you we must say that  
you are the first  
person that has  
asked for such infor-  
mation we hope to  
be able to pay any  
debt we may contract

J. M. Winborne & Co.

POSTAL CARD - ONE CENT.

UNITED STATES OF AMERICA

THIS SIDE IS FOR THE ADDRESS ONLY.



Exhibit  
"H.Q.M."

W. B. Ferguson

Suffolk

12/9  
11

"H.O.W."

1890. 1. 1. 1.

1890. 1. 1. 1.

The first of the year has been a very busy one for me. I have been out of the country for some time and have been very busy with my work. I have been out of the country for some time and have been very busy with my work. I have been out of the country for some time and have been very busy with my work.

I have been out of the country for some time and have been very busy with my work. I have been out of the country for some time and have been very busy with my work. I have been out of the country for some time and have been very busy with my work.

Please give all my love to your family. I am very busy with my work and have not had time to write to you. I am very busy with my work and have not had time to write to you.

I am very busy with my work and have not had time to write to you. I am very busy with my work and have not had time to write to you. I am very busy with my work and have not had time to write to you.

W. B. FERGUSON & CO.

ESTABLISHED 1885.

WHOLESALE GROCERS,

SUFFOLK, VA.

April 4th, 1901.

Mess. H. O. Winborne & Co.,

Tunis, N. C.

Gentlemen:-

The enclosed card calls for twelve (12) barrels of Flour. You do not say whether you want Patent or Straight. We presume that the Straight is wanted, but we prefer to be more positive.

As we have never before sold you goods, will you please send us a list of each members name of the firm, and give us the reason for changing the firms name from A. E. Winborne to H. O. Winborne & Co.

We hope you will understand our position thoroughly, as we desire to know to whom we are selling the goods, and as we have been selling A. E. Winborne, we would like to know more of the firm of H. O. Winborne.

Please state if all the members are married, and give the age of each individual member; if they are possessed of property state how much is held in the name of each individual member and where located.

As soon as we receive the information, which we hope and feel will be satisfactory, and a further explanation regarding the order for Flour, we shall be pleased to give same our attention.

Return the enclosed card with your reply.

Very truly,

W. B. FERGUSON & CO.

COPY.

*E.H. Butler  
Direct Examination  
by Mr. Withers* 1.  
E. H. Butler being duly sworn deposes and says as follows.

Direct Examination by Mr. Withers/

Q.- What is your name, residence and occupation and do you know H. O. Winborne, A. E. Winborne and J. E. Winborne?

A.- E. H. Butler, 43 years old, live in Nansemond County and my occupation is farming. I know these parties.

Q.-On the 6th day of September 1902 please state on whose land you lived in Nansemond County, Virginia.

A.-I lived on John Winborn's or at least Mrs. Winborn's she is the lady I rented from.

Q.- What is your wife's name?

A.-Sallie A. C. Butler.

Q.- Are either you or your wife related to H. O. Winborne?

A.-No sir not at all no more than Adam's race.

Q.- Was H. O. Winborne a member of your family?

A.- No sir.

C. H. Holland being duly sworn deposes and says as follows.

Q.-How did H. O. Winborne do business at Buck horn, Virginia?

A.-Under the firm name as H. O. Winborne & Company.

Q.-Did you ever hear of his having any partners in business?

A.- I did not.

Q.- How did his goods come marked and how were his bills made out?

A.- I could not tell, I suppose H. O. Winborne & Co.

Q.-Please state how you know that H. O. Winborne had not partners at Buckhorn?

A.- I do not know.

Q.-Why do you say that the firm name was H. O. Winborne & Company

when you say you did not know he had any partners?

A.- Simply because I saw the goods marked that way come to him.

Q.- Do you recall from whom these goods came?

A.-I do not sir.

Q.- Did you ever see any person acting in the store as if they had interest there except Mr. H. O. Winborne?

A.- I did not.

Q.- Did you ever sell Mr. Winborne any goods?

A.-Nothing more than I did regular customers the farmers or any one else.

Q.-I mean for the store.

A.- No sir.

Q.-When you sold goods to this store, who bought them?

A.-I do not know that I sold at all I might have done so, I could not tell about that.

J. R. Winborne being duly sworn, deposes and says as follows.

DIRECT EXAMINATION BY MR. WITHERS.

Q.- Mr. Ferguson in his testimony states that when the goods in question were sold that it was the result of a short conference held between you, H. O. Winborne and him in the sample-room adjoining his office and that credit was extended to you, H. O. Winborne and A. E. Winborne under the firm name of H. O. Winborne & Company. Please state from whom you or your son bought these goods.

A.-We bought them from Mr. W. S. Cross . I told Mr. Cross that my son was going to leave and go in business at Buckhorn and I trusted him at Tunis and that I would have to trust him at Buckhorn." And so far as the terms were concerned we never talked with Mr. Ferguson about the terms, he might have talked with Mr. Cross I do not know anything about that. That was all that passed between us so far as the terms were concerned.

Plaintiff's counsel considers the above answer improper as it was the same as Mr. W. S. Cross stated in his testimony.

Q.- Did you ever state to Mr. Ferguson that the members of the firm of H. O. Winborne & Company at Tunis were A. E. and John R. Winborne?

A.-I certainly did not, I have never mentioned it.

Q.-What did you mean when you stated on the postal card that Ferguson & Company were the first to ask such a question, that is, about the members of the firm of H.O. Winborne & Company and their worth?

A.-I meant exactly what I said that he was the first and that we would have no more dealings until he could send the order as I had sent to him.

Q.-Mr. Ferguson says that after the first purchase you called on several occasions to leave small orders for the Buckhorn store, is that true?

A.-It is not.

says

Q.-Mr. Ferguson, that you bought the goods for the Buckhorn store and that Mr. H. O. Winborne was simply present at the time, are these the facts?

A.- They are not.

Q.-Was there ever such a firm as A. E. Winborne & Company?

A.- There never was.

Q.-Mr. Ferguson files as exhibit "H.O.W. No. 5" a letter dated January 4th, 1902 from you to H. O. Winborne. This letter states that you had shipped him some goods for the store at Buckhorn and advising him to keep his bills paid up and other advice. Please explain the circumstances under which this letter was written, why it was written and what was meant by it?

A.- It was meant to give advice to not extend so much credit that he could not pay all his bills, it was simply because I would hate to see him fall through in business. It was not because I had any interest in the least. So far as the goods is concerned I sent him the goods in part payment of what I owed him when I bought him out, we had more of certain grades than we needed and he agreed to take a portion of that as part payment.

Q.- John L. Gay states that you or your wife told him that H.O. Winborne was a member of the firm of A. E. Winborne & Company, was there ever such a firm as A. E. Winborne & Company?

A.-There certainly was not.

Q.-Mr. John L. Gay states that you and your wife told him that J.R. & A. E. Winborne and H. O. Winborne were partners at Tunis under the name of H. O. Winborne & Company, is that so?

A.-That is not so; I do not know what she told him, but I know I did not.

Q.-Mr. John L. Gay also states that you and your wife told him that H. O. Winborne had opened a business or started a business at Buckhorn and that you were partners there.

A.- I never told him so in my life, I never thought of such a thing.

Q.-Mr. Gay states that Mrs. A. E. Winborne stopped him in the road in front of your store and told him that you needed money and had to have it as you, your wife and H.O.Winborne were running a business at Buckhorn and needed the money to pay bills, is this true?

A.-I cannot tell, I do not know what she told him she will have to say for herself. I was not present. I never heard her say so. I am certain she never told him so.

Q.- Mr. Gay states that at the trial at Winton when H.O.Winborne & Company at Tunis were suing on a lost note that you made a statement in court that J.R.Winborne, A.E.Winborne & H.O.Winborne were running a business at Buckhorn and the firm was worth from \$2,000 to \$2,500 and that if the note ever turned up you would make it good and upon this statement the justice compelled him to pay the note and take only J.R. Winborne's bond as his security.

A.- I do deny a portion of it. we were not running business at Buckhorn I never told him or any other man such a thing I did make a statement that he kicked against taking our bond, three of us together for \$75.00 I did say that (I did not recollect the amount) I did say <sup>all of us were worth, say</sup> \$2,000 or \$2500 but they would not take that and we had to get Mr. Baines to go on the bond for \$75.00, four of us.

Q.-Did I understand you to say that you offered the individual

names of A. E., H. O. & J. R. Winborne as bondsmen and stated that the three were worth a certain sum of money and that you had to get Mr. Baines to go on the bond before it was accepted?

A.- I did.

Q.- Please state any thing else you may know of this matter.

A.- I do not know of anything else, I have nothing else to state I think we have stated enough to show we were not concerned in it.

Cross examination by Mr. McLemore.

Q.- It has been stated that in this trial which you speak of at Winton when you made the statement in court under oath that your firm at Tunis was composed of A.E.Winborne, J.R.Winborne & H.O.Winborne and that your firm was also in business at Buckhorn, did you make this statement, or any part of it?

A.- No sir I did not.

Further deponent saith not. Signature waived.

J. Whitney Winborne being duly sworn, deposes and says as follows.

DIRECT EXAMINATION BY MR. WITHERS.

Q.-What is your name, residence, age and occupation and do you know the parties to this suit?

A.-J. Whitney Winborne, 21 years old, Nansemond County, gentleman, I know the parties to this suit.

Q.-Where did you reside in 1902 when H. O. Winborne did business at Buckhorn?

A.-At Buckhorn.

Q.-Did you know H. O. Winborne at that time?

A.- Yes sir, I did.

Q.-How did he hold himself out as doing business?

A.-Why when any body sold anything to him they came to him for pay as far as I know and he always gave his receipts as H. O. Winborne I stayed with him and wrote some of these bills and all that I saw were signed H. O. Winborne. All of the goods I saw come there were marked H. O. Winborne, if any came H. O. Winborne & Company I did not know it.

Q.-How do you know this?

A.-Why from what I saw.

Q.-Did you work for Mr. Winborne in the store?

A.- Yes sir.

CROSS EXAMINATION BY MR. MCLEMORE.

Q.-Are you related to Mr. Winborne?

A.- Yes sir I am his first cousin.

Q.-Do you know whether any goods were shipped to H. O. Winborne & Company at this store while you were living with him?

A.-I never saw any.

Q.- You do not know how he bought goods from other people, do you?

A.- Do you mean goods from Suffolk, no sir I never saw him buy any.

Q.-Do you know what made him fail?

A.-Really I could not say.

Q.-Did he do much of a credit business?

A.-I do not know but I think he did, I think he did right much of a credit business.

Q.-Were you with him at the time of the failure?

A.- No sir.

Q.-How long were you with him?

A.- About one month.

Q.-At what period in the life of his business at Buckhorn were you with him?

A.- Really I do not know but I think it was about the first of his business there.

Q.- Did he have any goods shipped there from Tunis?

A.-I do not know that there was I never remember seeing them.

Q.- Did you ever hear him say anything about getting goods from Tunis for this store?

A.- No sir not that I remember.

Signature waived by consent.

Mr. George T. McClenny being duly sworn deposes and says as follows.

DIRECT EXAMINATION BY MR. WITHERS.

Q.- Please state your name, age, residence and occupation and do you know H. O. Winborne?

A.-George T. McClenny, 27, Buckhorn, Virginia, railroad agent, I know Mr. H. O. Winborne.

Q.-Were you the railroad agent at Buckhorn in the first part of 1902.

A.- Yes sir.

Q.-Please state if you know how H. O. Winborne held himself out as doing business at that time.

A.- Well most of the goods that were shipped there was in H. O. Winborne's name and no Company and all the dealings I had with him was H. O. Winborne.

I had right much wood cut at that time and all the receipts and checks I gave were to H. O. Winborne and as far as I know he was doing business as H. O. Winborne.

Q.-You say most of the goods were shipped to H. O. Winborne how many were shipped in any other name?

A.- I could not say, I do not think more than one or two shipments in H. O. Winborne & Company I do not know where they came from or nothing of the kind.

CROSS EXAMINATION BY MR. MCLEMORE.

Q.-You do not know, do you, how Mr. Winborne held himself out to the public generally as doing business?

A.- As to the best of my knowledge it was H. O. Winborne alone and no Company.

Q.-Do you know anything about how he held himself out to the people from whom he bought goods?

A.- I do not directly.

Q.- Then do not I understand that your knowledge of this business is confined to your dealings with him and his dealings with you.

A.- Yes sir.

Signature waived.

H. O. Winborne being duly sworn <sup>again</sup> deposes and says as follows.

DIRECT EXAMINATION BY MR. WITHERS.

Q.-Mr. Ferguson in his testimony states that when you and your father came to buy the first bill of goods from him that he took you in the sample room adjoining his office and had a conference regarding the account for the Buckhorn store and that you and your father then stated to him that H. O. Winborne & Company had decided to open a store at Buckhorn, Virginia. Please state what you may know about this.

A.-When I bought the first bill of goods I came to Suffolk and my father came with me I did not know whether he was coming to Suffolk or intended to go to Norfolk. I do not remember whether

he went the same day we came or the next day. Any way we went to Norfolk on that trip. We stopped in Mr. Ferguson's and Mr. Ferguson was not in, Mr. Cross was in and he asked us if there was anything he could do for us, I told him that I had stopped business at Tunis had sold out and was going <sup>to do</sup> business at Buckhorn and told him we needed some goods and he said he just as well trust me at Buckhorn as to trust me at Tunis. I told him that I was going to do business at Buckhorn as H. O. Winborne and he said Mr. Ferguson was not in but he felt sure it would be alright he could trust me at Buckhorn as well as at Tunis.

So much of the above answer <sup>as</sup> repeats the statement made by Mr. Cross is excepted to as irrelevant and improper evidence.

Q.-Mr. Ferguson states that he took you and your father in the sample room adjoining his office and had a conference about the account to the Buckhorn store, do you remember anything about this?

A.- He was not in town so Mr. Cross said.

Q.- Then I understand that you made all arrangements about credit with Mr. Cross, is that correct?

A.-Yes sir, on that day.

Q.-Did you give Mr. Ferguson more than one note?

A.-Yes sir.

Q.- How were the first notes given by you signed?

A.-H. O. Winborne.

Q.-Can you file any of these notes?

A.- Yes sir.

-----Notes here filed marked exhibit 5-----

Q.-Did Mr. J. R. Winborne after this first visit ever buy any goods for you from Ferguson?

A.- Yes sir, it seems to me he bought some goods for me on Monday morning but as to who he bought them from I do not remember I asked him if he would buy them for me as it would save me a trip down here.

Q.-Is the occasion of which you speak the one when you requested your father to stop in Mr. Ferguson's and ask if he had received an order, I think it was for sugar, and if so to hurry it up?

A.- Yes sir I had ordered it a day or two before and it had not come so I asked him to stop in there and tell him to ship it.

Q.- Mr. Ferguson has filed a letter from your father to you in which your father says that he had shipped you certain goods from Tunis, gave you some advice about extending credit and paying your bills. Please explain what goods this letter refers to, why they were shipped to you and what the letter means.

A.- When I first opened business in Buckhorn I did not have any fixtures we had been running two stores at Tunis to the convenience of Mr. Gay, and when I went to Buckhorn I borrowed some fixtures we had at one place from my mother. In shipping them he had to send me a bill so I could check them up and to know if anything was lost. I do not remember what was on the bill, I know that there were a lot of over-alls he had more than he specially needed so he shipped me I do not remember the dozens of pairs and I gave him credit for the over-alls and the rest of the things were borrowed.

Q.-Mr. F. A. Holladay states that on one occasion you came into his store in Suffolk and asked for credit for a bill of goods, that he asked if it was the same concern as H. O. Winborne & Company at Tunis and that you said I am H. O. Winborne at Tunis and want goods shipped to the same concern at Buckhorn. Please state what you remember of this conversation.

A.-I was in mr. Holladay's office and asked him if he would ship me some feed and he asked me if I wanted it shipped to H. O. Winborne & Company at Tunis, I told him no that I was not doing business at Tunis at all but that I was doing business at Buckhorn as H. O. Winborne and he said well if that was the H. O. Winborne that was at Tunis that he had just as soon ship me goods to Buckhorn as to Tunis. He asked me if it was H. O. Winborne & Company and I told him no that I had sold out at Tunis and was doing business at Buckhorn as H. O. Winborne and he said very well he would ship them. I do not remember the bill but I think it was something like \$30.00.

Q.- Is Mrs. Sallie A. Butler any kin to you and are you in any way a member of her family?

A.- No sir.

CROSS EXAMINATION BY MR. MCLEMORE.

Q.- When did you retire from the firm at Tunis?

A.-It was December 1901 I think.

Q.-When did you begin business at Buckhorn?

A.-Sometime during January 1902.

Q.-How many firm names did you do business under at Tunis?

A.-Only one name, H. O. Winborne & Co.

Q.- Who constituted that firm.

A.- My father and I.

Q.-Was your mother ever a partner with you or your father?

A.-No sir.

Q.-Did she ever conduct any business there in her own name?

A.- Yes sir.

Q.-When was that?

A.- That was I do not remember what year but I think it was in 1900.

Q.-Do you know how the goods shipped to you at Buckhorn by Ferguson were billed and charged.

A.-They were billed not more than three<sup>or</sup> four to H. O. Winborne & Company and all the rest H. O. Winborne.

Q.-Do you know why they changed the bill?

A.- Yes sir.

Q.-Do you know how the goods bought from Holladay Brothers were billed?

A.-I do not know I cannot say positively H. O. Winborne. I asked Mr. Ferguson to change the bills and to ship them to H. O. Winborne and not to any Company.

Q.- You spoke just now of certain goods shipped<sup>to</sup> you from Tunis for which you credited your father, upon what did you credit your father?

A.-I credited his account with it with what he owed me on the stock of goods I had sold him.

Q.- Did you have a regular account on your books with your

father?

A.-I had one-half interest in the stock at Tunis and I sold him my interest I owed him for board and of course he owed me for my part of the stock of goods I do not remember how it was fixed now but he shipped me his goods as part payment.

Q.-Then do you remember upon what you credited your father when these goods were shipped to you?

A.-I credited his account on my books.

Q.-How was that account which you had against him and which showed him to be indebted to you ever paid?

A.- Well I was indebted to him at the same time, I was up there in January 1902 and I think we fixed up our business then.

Q.-Do you mean in January 1902 you fixed up your differences between you and included in this settlement the goods which he had shipped you from Tunis.

A.- Yes sir.

Q.-Have you got this book in which this account was kept?

A.-It did not take but a very small piece of paper to keep that on I think it was a leaf out of a day book, I think I can present it. I think I can produce it.

Q.-I would thank you to produce this book.

A.-It is not in the book now.

Q.- Where is it now?

A.- It is in a pocket-book at Drum Hill.

Q.- In whose pocket-book?

A.- Mine.

Q.- Why have you kept this account in a pocket-book for these two or three years?

A.-It was with some of my other papers and I have never taken it out and destroyed it.

Q.-Then you have it with other papers in your pocket-book?

A.- Yes sir if it has not been destroyed since I left it there.

Q.-When did you last see this account?

A.-It has been something like a year ago.

Q.-You say you have it there if it has not been destroyed since you last saw it, who has charge of your pocket-book?

A.-My mother.

Q.-Has she any authority to destroy your papers?

A.- None at all.

Q.- Did you keep any books at your store at Buckhorn this account was kept in the book as any other, was it?

A.-It was not kept in the book that was at Buckhorn, but was kept by me at Buckhorn.

Q.-How much on this account showed that your father owed you when you left Tunis?

A.- I do not remember now.

Q.- Can you give me any idea?

A.- No sir.

Q.-Was it as much as a hundred dollars?

A.- No sir.

Q.- Was it as much as fifty dollars?

A.-I could not say positively.

Q.-When you and your father had the settlement who was in debt to the other ?

A.-I do not remember exactly now I think I was in debt to him some.

Q.- Did you have a settlement and passed receipts when you had your settlement?

A.-Yes sir.I think so.

Q.- Did this statement have upon it an item embracing the goods shipped from Tunis to you by your father?

A.-It did.

Q.- And that is the statement which you have kept, is it?

A.- I cannot say positively that it is the one, I have one or two.

Q.- About what did the over-alls shipped you amount to?

A.- I do not remember.

Q.-About how many pairs were shipped you?

A.- I havent any idea.

Q.- How were they shipped?

A.- In a box.

Q.- By what route?

A.-They were shipped on the Norfolk & Carolina to Suffolk and then transferred to the Seaboard, I suppose that was the way they came I do not think they carried them to Norfolk.

Q.- Did they not come by Franklin?

A.- I cannot say positively Mr. McCleary can state that I do not remember. It is very probable that they did as it is about as quick one way as another. I think since you mentioned it they did come by Franklin.

Q.-When you sold out in Tunis to your father did you give any notice to the public that you had sold out?

A.- No sir I did not publish <sup>in</sup> the paper, when I bought the first goods from W. B. Ferguson & Company I bought them of Mr. Will Cross who was working for them at that time and told him that I had sold out At Tunis and was going in business at Buckhorn as H. O. Winborne I also told Norfleet & Brother when I bought goods of them when I was in Norfolk I bought dry-goods from Hirschler and told them the same, that is all the publishing that I did.

Q.- Where are you living now?

A.- Near Buckhorn.

Q.-When were you last at Drum Hill.

A.- In July I think.

Q.-Did you see your papers that you have referred to at that time?

A.- No sir.

Q.- Will you please kindly file the statement that you said pertaining to settlement between you and your father and which is at this moment in your pocket-book at Drum Hill with the notary. - -

A.-I understood you to say it was there now I could not swear that that was there. I told you before I could not say it was there I left it there but I cannot say that it is there now.

Q.- I think you said that you left in your pocket-book, did you not?

A.- Yes sir.

Q.-Then it is there now in your pocket-book unless your mother has destroyed it, is it not?

A.-No sir there are others who could destroy it.

Q.- Unless somebody has destroyed it, it is there now.

A.- Unless something has destroyed it.

Q.- Who has access to your pocket-book at Drum Hill?

A.- I gave it to my mother and told her to put it in her trunk that I had some papers I did not care to carry about with me and to put it there for safe keeping.

Q.- Did you tell your mother these were valuable papers and request her to take care of them for you?

A.- I asked her if she would take care of my pocket-book that I had some papers in it.

Q.- Do you know anything about the suit which was brought by H. O. Winborne & Company I think against John L. Gay at Tunis?

A.-Yes sir.

Q.-What do you know about this suit?

A.-Mr. Gay owed H. O. Winborne & Company an account and would not pay it , we had to sue him for it.

Q.- Who was H. O. Winborne & Company at that time?

A.-The business had been running as H. O. Winborne & Company and the bills that were due the Company had not been settled so of course H. O. Winborne & Company had to collect them and I was at Buckhorn at that time and my father had to attend to it. I was H. O. Winborne and my father was the Company.

Q.-Then if I understand you the company at that time consisted of H. O. Winborne and John R. Winborne?

A.-They were but they were not doing business then, the store was not in H. O. Winborne & Company's name. H. O. Winborne & Company were suing for their debts.

Q.- If I understand you the H. O. Winborne & Company who were suing were H. O. Winborne and J. R. Winborne.

A.- It was J. R. Winborne suing and of course he had to sue for H. O. Winborne & Company's debt because he had bought out H. O. Winborne & Co. and doing business in his own name.

Q.-Who was doing business in his own name ?

A.- My father, J. R. Winborne.

Q.-Then at the time this suit was brought was the business at Tunis being conducted under the firm name of J. R. Winborne?

A.- Yes sir.

Q.-Who owned the debt due by John L. Gay for which suit was brought.

A.- My father.

Q.- But if I understand you correctly the original debt due by Gay at the time the same was contracted was due to you and your father doing business under the name of H. O. Winborne & Company, is this correct?

A.-Yes sir.

Q.- Have no further questions.

Further this deponent saith not. Signature waived by consent.

Plaintiff's counsel requests that the original account of statement between H. O. Winborne and J. R. Winborne be filed with these depositions.

not copy

May 27th, 1905.

Mrs. A. E. Winborne,  
Drum Hill, N. C.

Dear Madam:-

I beg to enclose you herewith a copy of a statement which has been made by Henry Lawrence of Tunis, N. C. Please let me know what answer you have to make to this testimony.

Yours very truly,

RWW/EK

Ham Hill ne- 5/29/05  
Mr R. W. Withers

I dear Sir

In reply  
to your letter I will  
say I never told him  
any such thing in my  
life I never knew him  
I just knew of him  
his statement is absolutely  
false if it was the last  
words I ever had to speak  
I would say so

Yours Truly

Mrs A. E. Winsome