1909-034
Nansemond Co (Suffolk) Chancery Causes: John H. Babb vs Joseph W. Rabey et al

Spivey, Nansemond Lumber Co], Baker, Kilby, Dennis, Munn, Wells, Mack

$ 2.50 October 8, 1909.

Received of S. E. Everett, Attorney, Two Dollars and Fifty cents, in the suit of J. H. Babb against Joseph W. Rabey and others in full for Sheriff fees.

A M Bigbee
Sheriff

$ 6.00 October 8, 1909.

Received of S. E. Everett, Attorney, Six Dollars, Clerk's cost in the suit of J. H. Babb against Joseph W. Rabey and others.

A P Gunn D C

$ 37.50 October 8, 1909.

Received of S. E. Everett, Attorney for plaintiff in the suit of J. H. Babb against Joseph W. Rabey and others, Thirty-seven Dollars and Fifty cents. It being the amount agreed upon in the compromise settlement.

J. W. Rabey

To the Clerk of the Circuit Court of Nansemond County.

J. H. Babb.....Complainant,

vs. In Chancery,

Joseph Rabey, Mary Virginia Rabey, and

C. J. Dennis, trading as The Nansemond

Lumber Company.....Defendants.

Issue summons to Second Rules, (Third Monday)

in September, 1908.

H. H. Everett P. Q.

Pay $1.50

Suffolk, Va., August 24, 1909.

Mr. A. H. Baker, Sheriff,
Suffolk, Va.

Dear Sir:

Enclosed you will find two copies, one to be served on Joseph W. Rabey, and one to be served on Mary J. Rabey.

You could catch Joseph W. Rabey in town, but I hardly think you would find his wife here as you would have to make the trip any way. But, any time between now and the first of September of the fifth of September, will be ample time.

The Nansemond Lumber Co. has signed, make your returns on the one that the Lumber Company signed.

Very truly yours,

CHANCERY SUMMONS

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Joseph Rabey, Mary Virginia Rabey and C J Dennis trading as The Nansemond Lumber company

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 1908 to answer a Bill in Chancery, exhibited against them in the said Court by J N Babb

And have then and there this summons.

Witness, R. R. SMITH, Clerk of our said Court, at his office, this 15th day of September, 1908, in the 133rd year of the Commonwealth.

A copy—Teste:

_____, CLERK.

Teste: R R Smith, CLERK.

By D D Gomey D.C

C. F. Dennis not being found at his usual place of abode I executed the within process this 16th day of Sept 1908 by delivering a true copy thereof to Irma Dennis wife of C. F. Dennis, she having over 16 years of age, but by reason of her youth as to principal, she the principal of C. F. Dennis. A H Baker Sheriff

Sheriff

S E Everett, p. q.

J N Babb

vs. } In Chancery.

Joseph Rabey and others

1908---

September---Rules.

Third---Monday.

Nansemond Circuit Court.

Process Book No. 3

Page 58

Executed the within process this 16th day of Sept 1908 by delivering a true copy thereof to Joseph Rabey in person within my county

A H Baker Sheriff
by Jno R. Cooley Deputy

Executed the within process this 16th day of Sept 1908 by delivering a true copy thereof to Mary Virginia Rabey in person within my County

A H. Baker Sheriff
by Jno. R. Cooley Deputy

To, Joseph W. Rabey, Mary J. Rabey, and C. J. Dennis; trading as the Nansemond Lumber Company:

Take notice that on the 14th day of September, 1909, at the office of S. E. Everett, of Suffolk, Va., in Nansemond county, between the hours of nine and six o'clock, of that day, I shall proceed to take the depositions of B. P. Baker, Missouri Henderson, Edwin Spivey and others, to be read as evidence in my behalf, in a certain suit in equity, depending in the Circuit Court of Nansemond county, wherein I am plaintiff and you are defendants; and if from any cause the taking of the said depositions be not commenced, or if commenced, be not concluded, on that day, the taking thereof will be adjourned from day to day at the same place, and between the same hours, until the same shall be completed.

Given under my hand this 23 day of August, 1909.

J. H. Boone.

We accept notice.

C. J. Dennis Trading as Nansemond Lumber Co.
by
J. H. Burroughs his attorney

Executed This 28th day of August - 1909
by delivering a True Copy of the
within notice to Mary J Raby wife
of James Jasper W Raby Defendant
found at his usual place of abode
I executed this notice by delivering
a true copy to Mary J Raby his
wife within named found on the
premises and being a female
and over the age of 16 yrs and
by giving her information as to
the purport

A. H. Baker Sheriff
By. G. C. Griffin DS

J. H. Babb.....Plaintiffs.

vs.

Joseph W. Rabey, Mary Virginia Rabey, and

C. J. Dennis, trading as Mansemond Lumber

Company.....Defendants.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

By consent of all parties, entered of record in open Court, it is ordered that this cause be submitted to the Judge of this Court for such decision and decree, judgment or order, therein in vacation, as may be made in term.

To the Cle

In the Circuit Court of Nansemond County, Virginia-

John H. Babb-
*
VS * -In Chancery-
*
Joseph W. Rabey and Others-

This cause came on this day to be again heard on the papers formerly read, and on the motion of the defendant, Joseph W. Rabey, to revoke and rescind the decree entered in this cause on the 27th day of May, 1909, and was argued by counsel.

On consideration whereof, and it appearing to the Court that there is proper cause therefor, the Court doth hereby annul, rescind and revoke the said decree, and leave is hereby given the said defendant to file his answer in this cause within thirty days from and after date of this decree.

And the cause is continued-

John H.Babb-

VS

Joseph W.Rabey and Others-

28th.

Enter this ~~21st~~ day of

May,1909.

James L. Emory

Entered in Chancery
Order Book No. 4 Page 339

At the request of Mrs. Hall
I go on & the letter that
was left unfinished by Ann
Sand Belonged to Effie
And Dated [illegible] and
[illegible] Left to there
Son Edwin and Hilary
Lucas Bought a Cabin
Edwin which Hilary Shirey
And Effie Shirey Isaac &
Brothers. Hilary & Shirey
Was Uncle to Edwin & Hilary

Mrs. Hallie Baker

STATE OF VIRGINIA,

to-wit:

COUNTY OF NANSEMOND.

This is to certify that I am Mrs. Missouri Henderson, a sister of Edwin Spivey, Ellen Spivey, and Peggy Ann Spivey. That we are all children of Theophilus Spivey, and that we owned a tract of land containing about seventy five acres, situated near Nurneyville, Nansemond County, Virginia.

That just before the War we divided this said tract of land giving Edwin Spivey his tract of 19 3/4 acres, apart from the other tract, and the three sisters kept theirs together, which was never divided. This division was made before the War by the consent of all parties interested. As to whether it was made a matter of record, or as to whether it was done by a suit, I do not remember. My brother says however that he is inclined to think there was an old partition suit, but that part I do not know anything about, but I do know that it was divided and the line well established between the Edwin Spivey tract and the three sisters. The Edwin Spivey tract is now owned by a Mr. Babb I have been told, and it is what is known as the Hilary Spivey tract. This tract of land has been apart from the other tract ever since before the War, and there has never been any question raised about it until this time, and I have been told that some of the Rabeys have been making some threats. I have been told that my brother signed a deed conveying his interest in the Hilary Spivey tract of land to Joseph W. Rabey. At the same time and in the same deed he conveyed his interest in my sister's part, Peggy Ann. This was a trick of A. J. Rabey, and my brother did not understand that he was doing any such thing. I know my brother came to me before he signed this deed and asked me for the old deed of my mother's,

and that A. J. Rabey got this old deed and never gave it back to Edwin Spivey, and it has never been returned to the family. Edwin Spivey did not intend to sign such a deed as was written for him to sign, because he did not claim to have any interest in the property except the interest that he had in the portion belonging to my sister, Peggy Ann.

Witness my hand and seal this 1st day of March, 1909.

W A Rea
R A Rawles

Missouri her X Henderson (Seal)
mark

STATE OF VIRGINIA,

to-wit:

COUNTY OF NANSEMOND.

I R A Rawles, a Notary Public for the county aforesaid, in the State of Virginia, do certify that Mrs. Missouri Henderson whose name is signed to the writing hereunto annexed, bearing date the 1st day of March, 1909, has acknowledged the same before me in my county aforesaid.

Given under my hand this 1st day of March, 1909.

R A Rawles

Notary Public.

My term of office expires on the 30 day of January, 1911.

STATE OF VIRGINIA,

to-wit:

COUNTY OF NANSEMOND.

This is to certify that the undersigned to this certificate is Edwin Spivey, and he was the owner of the tract of land now owned and occupied by J. H. Babb, and formerly owned by Hilary Spivey. This tract of land was conveyed to Hilary Spivey about 1860. I owned this tract of land, and I am a son of Theophilus Spivey. I had three sisters, Missouri Spivey, who married A. J. Henderson, Ellen Spivey, who is now ~~living with me~~ dead, and Peggy Ann Spivey, who is dead. This said tract of land that I conveyed to Hilary Spivey was set apart to me, and I think that it was done by a suit in court, but it has been so long I cannot remember clearly how it was, but I know that I owned this little tract of land apart from all of the other children. When Peggy Ann died I signed a deed conveying my interest that I had in her one-third to Joseph W. Rabey, at least I have been told that the deed was made in favor of Joseph W. Rabey, but I thought I was conveying it to A. J. Rabey. I do not even know Joe Rabey, and do not know that I ever conveyed any interest to him. In fact I do not know how that deed was made anyway. I have been told that I also conveyed the interest that I had already conveyed to Hilary Spivey t to Joseph W. Rabey, but I do not remember or know anything about this. I do not know that it is necessary for me to tell all about this deed, but I can say this that A. J. Rabey took the advantage of me in this deal, and did some things about it that I do not understand. I do not even know that I had a right to any interest that my sister Peggy Ann had in the farm, but I do remember A. J. Rabey saying something to me about this, and I signed a deed as I understand it conveying this to him. I have been told that Joseph W. Rabey of late has been trying to set up some claim to the tract of land now owned by John H. Babb, which was a part of his father's estate, and I have got this to say

about that. I know Joe Rabey has nothing to do with this, and that such a claim is unjust and that he knows that to be true. I have no interest in this land whatever, but I do not like to see anyone mis-treated, and am willing to tell what I know about it any time. If Mr. Peter Prentis was living he could tell all about this whole affair, and would know that Joe Rabey has nothing to do with this tract of land, because it was set apart to me in Mr. Prentis' court, and I conveyed it as I have stated above. I repeat that A. J. Rabey took the advantage of me when I signed this deed, and if it becomes necessary for me to tell all I know about this I will do so.

Witness my hand and seal this 26th day of February, 1909.

Witness O. [illegible] Edwin Spivey (SEAL)

STATE OF VIRGINIA,

to-wit:

COUNTY OF NANSEMOND.

Sworn and subscribed to by the undersigned Edwin Spivey this 26th day of February, 1909.

W. E. Hackleman
Notary Public.

My commission expires March 23" 1912.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

******** IN CHANCERY *******

J.H.Babb

vs.

Joseph W.Raby and Others-

Your respondent reserving to himself all just grounds for exception to the same makes answer to the allegations of the bill in this cause as follows, to wit:-

He charges as untrue the allegation in said bill that the complainant is now in possession and has a title to a certain tract of land situated near Nurneyville,Nansemond County,Virginia,and is what is known as part of the farm of Thomas W.Babb,father of the complainant,and also known as the Hiliary Spivey tract of land,and containing nineteen and three fourths acres.

Your respondent admits that the complainant is in actual possession of a part of the Theophilus Spivey tract of land but holds it only trought the continued sufferance of your respondent and holds no legal title to said land.

That it is untrue that the parcel of land in controversy, if it can be ascertained from said bill that any tract of land is in controversy,was conveyed to Thomas Babb,the father of the complainant by Bevery P.Bakerand wife October I2, I866and recorded in Clerk's Office of Nandemond County, in Deed Book No I7,Page 229, and it is also denied and charged as untrue that any tract or parcel of land was conveyed to Wllace Wilby and wife by Beverly P.Baker by deed dated April I,I885,and recorded in said Clerk's Office in Deed Book No I4,Page 477, and it is denied and charged as untrue that Wilbur J. Wilby,Special Commissioner,ever conveyed any tract of land to Wallace Wilby as alleged in said bill, or that said Wilbur J.Wilby,Special Commissioner, was authorizedd by any decree to convey any tract of land to Wallace Wilby as alleged in said bill.

Your respondent denies emphatically that Edwin Spivey conveyed to Hilary Spivey in I860, or at any other time, any interest in the Theopilus Spivey, tract of land, which is now owned in its entirety by your respondent, and has been owned by him and those through whom he claims, by good and valid, legal deeds, recorded, for many years-

Your respondent denies and charges as untrue that Edwin Spivey conveyed any land or other property to F.W. Rawles, by deed recordd in said Clerk's Office in Deed Book No.6. Page 23.

Your respondent denies and charges as untrue that Hilary Spivey was in possession of any part of the Theophilus Spivey tract of land, a part of which, to wit, neneteen and three fourths acres, appears to be the land claimed by the complainant in said bill,-forty eight years ago, or ever had title to any part of said land.

Your respondent is advised and admits that the said Hilary Spivey occupied a small part only of said land as a squatter, without rights of any kind, for a very few months, probably twenty-five years ago, and it was known that he had no right, legal, equitable or moral, to any part of said parcel of land.

Your respondent denies that the said Theophilus Spivey tract of land was partitioned and divided among the four children of said Spiveyand emphatically denies that the parcel of land in question was set apart to Edwin Spivey by any partition proceedings, or that the said Edwin Spivey sold said parcel of land and conveyed the same by deed in I860 to said Hilary Spivey.

Your respondent believes and charges that such allegations that the land in question was conveyed in I860 by Edwin Spivey to Hilary Spiveyiis made because the records in the County Clerk's Office were destroyed in I866and cannot now be produced to disprove such bold and

and groundless statements,-

Your respondent is not prepared to deny that Bevery P.Baker may have surveyed the whole or any part of the Theophilus Spivey tract of land,but does deny that such survey if made was for the purpose of showing ownership of himself, or any other personthrough whom he may claim to the said parcel of 193/4 acres of land.

Your respondent charges as untrue the allegation that the complainant, and those through whom he claims title to the said land, have been in quiet and peaceable possession for forty-eight years of the said land unmolested by anyone, and further charges that the said Hilary Spivey was never in possession of the said land,except as a squatter,without rights of any kind,upon a small part of the said land which was not then actually occupied by the true owners, and that said Hilary Spivey took possession of the little house on the said land, which was then unoccupied,because he had no home, and was absolutely and notoriously insolvent and without estate at that time.

Your respondent charges as false and untrue the allegation in the bill that he is waiting for certain people to die that he may have a better opportunity to set up his claim to said tract of land,and denies the imputation that he is inclined to delay the progress of the cause.

Your respondent alleges that he has a good andvalid title to the parcel or tract of land in question made by good and valid deeds properly executed and duly recorded in the Clerk's Office of Nansemond County,and further alleges that he repeatedly stated to Thomas W.Babb that he owned the interest once owned by Edwin Spivey in the Theophilus Spivey tract of land,of which the parcel of land in question constitutes a part,that he has frequently and publicly exercised acts of ownership,which was his right to do, over parts of the same tract of land,thatbhe cut trees from the land,without interference or molestation by the complainant, or any other

person through whom the said complainant pretends to claim the said land. That your respondent sold and conveyed certain timber standing on this land by deed in the year 1905, and that the purchasers have since cut timber from the said land, pursuant to their rights under said deed, without interference by the said complainant, or any person through whom he claims.

Your respondent admits that Thomas W. Babb, the father of the complainant, held actual possession of an open field, a part of said land, for some years prior to his death, yet with a knowledge on his part that your respondent claimed the said by valid deed. That the said land was cultivated by the sufferance of your respondent.

Your respondent avers that the said Edwin Spivey, by a bona fide deed, dated January 10, 1890 and recorded in the Clerk's Office of Nansemond County in Deed Book No. 23, and for a valuable consideration, conveyed to your respondent all his interest in the Theophilus Spivey tract of land, of which the land in question is a part, which deed your respondent wished the court to read as a part of this answer, and that your respondent subsequently, by deed, dated June 24, 1893, and recorded in Deed Book No. 26, Page 442, in said Clerk's Office, conveyed the same interest to one Matthew Munn, for a valuable consideration, which deed is made a part of this answer.
That Matthew Munn and wife, by deed dated January 15, 1894 and recorded the same day in Deed Book No. 34, which is made a part of this answer, conveyed the same interest together with other land, to your respondent.

Your respondent denies that the said Edwin Spivey ever conveyed or attempted to convey the said parcel of land to Hilary Spivey, and indignantly denies and repudiates as false and untrue the intimation that the deed from Edwin Spivey to your respondent was obtained by fraud and for a sinister purpose.

That such intimation is the creation of the brain of the complainant in the amended bill in this cause, or someone for him, for the fraudulent purpose of seeking to divest your respondent of the title to the said tract legally acquired by him.

And your respondent, having fully answered the matter of said amended bill, prays that the said bill be dismissed, and your respondent discharged with costs by him expended.

Lee Britt
P. Q.

Joseph W. Rabey

County of Nansemond, To wit:-
This day personally appeared before the undersigned, a Commissioner in Chancery of the Circuit Court of Nansemond County, Joseph W. Rabey and made oath that the statements made in the foregoing answer so far as made of his own knowledge, are true, and, so far as made upon knowledge or information derived from others, he believes them to be true.
Given under my hand this 26th day of June, 1909.

Lee Britt,
Commissioner in Chancery

Filed June 26th 1909

A. Gomez D.C.

In the Circuit Court of Nansemond County, In Chancery.

J. H. Babb.....Complainant.

vs. Demurrer.

Joseph W. Rabey and others.....Defendants.

The complainant says that the demurrer filed by the said defendants is not sufficient in law.

1st. The bill does state this language: "Your complainant further states that Hilary Spivey, from whom he gets this title, was in the possession of this tract of land forty-eight years ago, and your complainant further states that the said Joseph W. Rabey has never, nor has anyone through whom he claims, had possession of this tract of land within the forty-eight years past." And further states that it was the same tract of land conveyed to Hilary Spivey by Edwin Spivey in 1860, and that said deed was destroyed in 1866 when the Clerk's Office of this county was burned, and the very purpose of this suit is to establish the lines which were matters of record before said fire.

2nd. Language in the defendants demurrer: " That the expressed purpose and gist of the cause is to have definitely settled and established a boundary line between the alleged tract of land and other land admitted to be owned by Joseph W. Rabey, and the chancery court has no jurisdiction to settle such boundary line." That the Court of Chancery is the proper place to settle matters of this kind.

J. H. Babb by
E. Emmerson Tilley

J. H. Babb

13 Joinder in demurrer

Joseph V. Roby et al

In the Circuit Court of Nansemond County-

------IN CHANCERY-----

J.H.Babb----------Complainant-

VS) Demurrer-

Joseph W.Rabey and Others----------Defendants-

The said defendant,Joseph W.Rabey,says that the bill in this cause is not sufficient in law, and states the grounds of demurrer relied on to be as follows:-

1st-That the alleged tract of land situated near Nurneysville,Nansemond County,Virginia, known as part of the farm of Thomas W.Babb,father of the complainant, and also known as the Hilary Spivey tract of land, is shown by said bill to be a one-fourth interest and by the deeds made a part of the said bill by reference to be an undivided one-fourth interest in the Theophilus Spivey tract of land,and there is no allegation in said bill that the said original tract of land,known as the Theophilus Spivey tract of land,has ever been partitioned by deed,court proceedings or otherwise,and the one fourth set apart to said Thomas W.Babb,or to any person claiming by, through or under him.

2nd-That the expressed purpose and gist of the cause is to have definitely settled and established a boundary line between the alleged tract of land and other land admitted to be owned by Joseph W. Rabey;and the chancery court has no jurisdiction to settle such boundary line.

3rd-That there are irreconcilable conflicts in material parts of the bill involving the issue raised therein.

For the foregoing reasons the bill should be dismissed and costs awarded to the defendants.

Joseph W. Rabey
by Lee Smith
Attorney

Filed this 16th day of February 1909

In the Clerk's Office of Nansemond County Court the 7th day of October 1899;

This Deed was presented with the Certificate annexed and admitted to record.

Teste:

A D Gomey Deputy

for R R Smith Clerk

State of Virginia
County of Nansemond To Wit:
I F W Rawls a Justice of the Peace
for the County aforesaid in the State
of Virginia. Do certify That J. W. Rabey
and Mary Virginia Rabey his wife
whose names are Signed to the Writing
hereto annexed bearing date the 3rd day
of Feb 1899 have acknowledged the Same
before me in my County aforesaid Given
under my hand this 3rd day of Feb 1899.

F. W. Rawls J. P.

This Deed, Made this 3rd day of February in
The year one Thousand eight Hundred and Ninety
nine, between Joseph W. Raby, and Mary Virginia
his wife, of the County of Nansemond and State
of Virginia of the first part, and Thomas
W. Babb, of the said County and State
of the second part —
Witnesseth: That in consideration of the
Sum of Twenty Five (25) Dollars, The said
Jos. W. Raby and Mary Virginia, his wife,
do grant unto the said Thom. W. Babb, and
his heirs and assigns, forever, with Genral
warranty, That parcel of land situated
in Cypress Magesterial District in the
County of Nansemond in the State afore=
=said, Containing by estimation One (1/2)
acre more or less, and bounded on the
North and east by the road leading to Cypress
Chapel and joining the land of Thom. W.
Babb on the South, on the west by the land
of Jos. W. Raby, The said land being in
part which was conveyed to Jos. W. Raby by
deed from Matthew Mimm and wife, dated
the 15th day of January (1894) and Recorded
D. B. 34, Page 36, in the Clerks office
of Nansemond County Court.
The said grantors Covenant that They have
the right to convey the said land to the
grantee; That They have done no act to incu=
=mber the said land; That the grantee shall
have quiet possession of said land, free
from all incumbrances, and that They, the
said parties of the first part, will execute
such further assurances of the said land
as may be requisite,
Witness the following Signatures and Seals

J. W. Raby (Seal)
Mary V. Virginia Raby (Seal)

Deed of Bargain & Sale

Joseph W. Raley & wife
To
Thomas W. Babb

Admitted to record the
7th day of October 1899
Recorded in D. B. 44.
Page 105

Oct 7th 1899
Admitted to Record

1899 Octo. 14th.
Examined verified
and delivered.
S. M. Lawrence Deputy
for R. R. Smith Clerk.

Tax	50
Fee	1 25
Paid	1.75

J. H. Babb.....Complainant.

vs.

Joseph W. Rabey, Mary J. Rabey, and C. J. Dennis, trading as the Nansemond Lumber Company....Defendants.

This cause came on this day to be heard on the original and amended bills taken for confess and set for hearing as to the defendants, Joseph W. Rabey and Mary J. Rabey, and on the answer of the defendant, C. J. Dennis, trading as The Nansemond Lumber Company, with general replication thereto by the complainant, exhibits and affidavits, filed by leave of court, and was argued by counsel:

On consideration whereof it appearing to the court that Theophilus Spivey owned a tract of land containing Seventy-Five (75) acres, more or less, and that the said Theophilus Spivey died leaving four children, namely; Missouri Spivey, who married A. J. Henderson, Ellen Spivey, Edwin Spivey, and Peggy Ann Spivey, and that said tract of land was partitioned and divided among the four children of the said Theophilus Spivey, and that the portion of Edwin Spivey, containing Nineteen and Three-fourths (19 3/4) acres, was set apart to him, and which is the Nineteen and Three-fourth (19 3/4) acres this day owned and possessed by J. H. Babb, and that Edwin Spivey sold said tract of land containing Nineteen and Three-fourths (19 3/4) acres to Hilary Spivey through whom and others J. H. Babb derives his title. It further appearing to the court that J. H. Babb, or those through whom he claims have been in possession of said tract of land for about Forty Eight (48) years; and it appearing from the records that the deeds by which said property is transferred from one owner to another is inadvertently described as a one-fourth undivided interest in a certain tract of land; and it further appearing to the court that the deed of Edwin Spivey, which conveyed said tract of land to Hilary Spivey, does not appear of record, as the Clerk's Office was destroyed by fire in 1866; the court doth adjudge, order and decree that the cloud on said title

be and is hereby removed, and that this decree shall perfect the title of the said complainant as if the proper deeds were duly of record, and shall be final against the claims of any of the parties to this suit, or any one claiming through or under them.

And it is further adjudged, ordered and decreed that the complainant in this cause shall pay the cost, and that this cause be removed from the docket, with leave to any interested party to have the same reinstated upon motion within twelve months from this date.

J. H. Babb,

vs.

Joseph W. Rabey et als.

Enter 27 day of May, 1909.

James L. McSmare.

Entered in Chancery Order
Book No. 4, page 337.

William J. Kilby to Wallace Kilby.

Whereas by a record of the Circuit Court of Nansemond County, made on the tenth day of April, in the year one thousand eight hundred and seventy-eight, in the case herein pending between Wallace Kilby, plaintiff and Sarah J. Spivey and others defendants, it was decreed and ordered that W. J. Kilby (who was appointed commissioner for that purpose) proceeded to sell the real estate, whereof Hilary Spivey died, seized and possessed on the terms and conditions named in the decree and whereas the said W. J. Kilby commissioner as aforesaid, pursuant to said decree, died on the twentieth day of February, 1879, sell privately as directed, the real estate aforesaid where the following parcel was purchased by Wallace Kilby at the price of Seventy Five ($75.00) Dollars, that is to say the one fourth fee simple interest of said Hilary Spivey deceased (subject to a dower of his widow, Sarah L. Spivey) in an undivided tract of land in Cypress District, Nansemond County, Virginia, containing seventy five acres, more or less, and bounded by the county road on which it lies, and the lands of Dempsey Babb and Daniel Henderson, and whereas, he, the said Wallace Kilby paid the said sum of $75.00 in cash, and whereas by said decree of the said court made on the tenth day of April 1878, in said cause it was also decided and ordered that the said W. J. Kilby, commissioner as aforesaid, make to the said purchaser of said real estate, a deed with special warranty in the usual form for the real estate aforesaid, and whereas the said sum of money has been paid. This deed therefore made this twentieth day of February 1879, between the said W. J. Kilby as commissioner aforesaid of the one part and the said Wallace Kilby of the other part witnesseth; that the said W. J. Kilby as commissioner aforesaid

in consideration with the said premisses and in execution of the aforesaid decree doth grant with special warranty unto the said Wallace Kilby and to his heirs and assigns forever, the said one fourth interest of said Hilary Spivey deceased, in the land aforesaid, and its appertenances subject to dower therein of said Sarah J. Spivey.

Witness the following signature and seal.

Wilber J. Kilby.

In the Clerk's Office of Nansemond County Court, the twenty second day of February 1879.

This deed was acknowledged by Wilber J. Kilby commissioner, and thereupon admitted to record.

Teste.

Peter B. Prentis. Clerk.

W. J. Kilby
w/ / to
Wallace Kilby.
Deed Book No. 7,
Page 279.

4) 75 (18
4
18

Hilary Spivey to F. W. Rawles.

Know all men by these presents that Hilary Spivey and his wife, Sarah J. Spivey in obedience and in keeping with an obligation and covenant executed by them on the 11th day of July A. D. one thousand eight hundred and seventy-five, for the benefit of F. W. Rawles, his heirs and assigns doth execute the following deed and vental covenant to wit: This deed made this thirtieth day of January A. D. 1877, between Hilary Spivey and Sarah J. his wife, of the first part and F. W. Rawles of the second part, for parties residing in the county of Nansemond and state of Virginia, witnesseth that the said Hilary Spivey and Sarah J. Spivey his wife in consideration of the sum of Eighty two and ninety four onehundredths ($82.94) Dollars, (of the amount still due the said F. W. Rawles as shown by the written covenant executed by the parties of the first part, bearing date July tenth, 1875, to which reference is given above) to them in hand (as described also said covenant to) paid by the said F. W. Rawles. And also, for further consideration of the said Hilary Spivey and Sarah J. Spivey his wife, having the rental use and enjoyment of the sold interest (here after to be described as well as heretofore described in the form covenant to which allusion has been made) until the twenty fifth day of December next doth acknowledge, grant and sell, and now without any reservation and by these presents hath granted and sold unto the said F. W. Rawles, his heirs and assigns, all the right, title and interest they hold by reason of the deed of bargain and sale from Edwin Spivey to the said Hilary Spivey, executed and admitted to record in the year, 1860, in the tract of land situated in Cypress township, Nansemond County Virginia, and known as the tract of land of which Theophelus Spivey died, seized and possessed, and upon which his widow, Nancy Spivey lived and died. Estimately to

contain eighty acres, more or less, and bounded by the lands of the said F. W. Rawles, George W. Babb, Daniel Henderson and others. And the said Hilary Spivey and Sarah J. Spivey, his wife, doth sell their interest in the above described tract of land unto the said F. W. Rawles, his heirs and assigns and the right and title of which they forever warrant and given by these presents.

Given under their hands and seals.

Witness, Hilary Spivey,

Daniel Skinner, Sarah Spivey.

A. J. Rabey.

In the Clerk's Office of Nansemond County Court, the third day of March, 1877, this deed was present and acknowledged to Hilary Spivey and Sarah J. Spivey, his wife, to be their act and deed. And the said Sarah J. Spivey being duly examined by me privily and apart from her husband, and having said deed fully explained to her, acknowledged that she had willingly executed the same and wished not to retract it.

Whereupon said deed is remitted to record.

Teste,

Peter B. Prentis. Clerk.

(11

Hilary Spivey,

to

F. W. Rawles,

Deed Book No. 6.

Page No. 23.

Andrew J. Henderson and others to A. Mack.

This deed made this thirtieth day of April, in the year one thousand eight hundred and eighty-six, between A. J. Henderson and Missouri, his wife, and Ellen Spivey, of the County of Nansemond, and state of Virginia, parties of the first part and Alexander Mack of the county and state aforesaid, party of the second part witness: that in consideration of the sum of One Hundred and Twenty-five ($125.00) Dollars, the said parties of the first part do grant with general warranty unto the said party of the second part and his heirs assigned forever, the following property to wit: All their undivided right, title, interest and estate of every character of whatever, in and to all that tract, piece or parcel of land situated, lying and being in Cypress Magisterial District, Nansemond County, Virginia, containing seventy five and one fourth acres, more or less, and bounded and described as follows: Beginning at the sweet gum tree and corner line, with David Henderson and Dempsey Babb, thence, S.34 to 2.68 chain to a sweet gum on the Rose branch, thence S. 25 to 5.66 chain to a pine and corner on Dempsey Babb and said Alexander Mack, thence S. 44 3/4 to 600 chain to a water oak, thence S. 35 1/2 to 5.34 chain to a fence, thence 79 to S. 6.06 chain to a fence, thence 73 1/2 to 1.96 chain to a beech tree, thence 70 1/4 to 2.35 chain to a water oak, thence S. 57 1/2 to 5.55 to a beech tree on Rose swamp (off set on this line 3.55 chain to a Paw Paw gum, corner on C. F. Savage with Hilary Spivey) thence 390 E. 11.00 chain, thence S. 14 1/2 E. 7.40 chain (offset to a oak) thence N. 41 E. 19.36 chain, leaving the run of the swamp at the corner of Tom Babb, thence S. 630 E. 5.68 chain, thence the road and corner of F. W. Rawles, thence N. 48 1/4 E. 2.25 chain, lane, thence N. 41 1/4 E. 11.20 chain, a large sweet gum, thence N. 9 1/2 E. 1.83 chain

a pine at a small branch, thence N. 1 1/2 E. 3.00 chain, (black gum) thence N. 52 1/2 to 5.00 chain, run of the swamp thence N. 71 1/2 to 4.00 chain, thence N. 47 1/2 to 5.00 thence N. 9 1/2 to 5.00 chain, thence N. 27 1/2 to 5.00, and thence N. 82 3/4 to 3.70 chain to the beginning of the same land of which the late Theophelus Spivey, the father of the grantors therein died, seized and possessed and on which he resided at the time of his death. The said grantors covenant that they have the right to convey the said land to the grantee: that the grantee shall have quiet possession of the said land, free from all encumbrances: that they, the said parties of the first part will execute such further appearances of the said land as may be requisite: that they have done no act to encumber said land.

Witness the following signatures and seals.

Witness A. J. Henderson, seal

F. H. Rawles. Missouri Henderson, seal

In the Clerk's Office of Nansemond County Court, the thrid day of April, 1886, this the foregoing day and the said Missouri Henderson being examined by me privily and apart from her husband, and having the said deed fully explained to her, acknowledged the same to be her act and declared that she had willingly executed the same and wished not to retract it, whereupon said deed is admitted to record:

Teste:

Peter B. Prentis, Clerk.

Henderson and others

to

Mack.

Deed Book No. 16,

Page . 338.

THIS DEED, made this 23rd day of December, in the year 1905, by and between J. W. Rabey and Mary V. Rabey, his wife, of Nansemond County, Virginia, parties of the first part, and C. J. Dennis, trading as Nansemond Lumber Company, of said County and State, party of the second part,

W I T N E S S E T H :

That in consideration of the sum of one thousand dollars cash in hand paid, the receipt of which is hereby acknowledged and the further consideration hereinafter mentioned the said parties of the first part do grant with general warranty unto the said party of the second part all the pine timber twelve inches and upwards in diameter across the stump fifteen inches from the ground at the time of cutting now standing, lying, growing and being on that tract of land bounded in part by the County road leading from Suffolk to Somerton and the lands of D. P. Rawles and Thomas W. Babb, and situated in Cypress Magisterial District, in Nansemond County, in the State of Virginia, and being the land onw which the grantors now reside, and was conveyed to said J. W. Rabey by Matthew Munn by deed recorded in D. B. No. 34, page 36, in the Clerk's Office of Nansemond County. Reference to which deed is hereby made for the boundaries therein given. Which sale and grant are made subject to the condition that the said party of the second part shall cut and remove the said timber from the said land within ~~said party then said right~~ six years from and after the date hereof, and in the event the said timber shall not be cut and removed from said land within said period then all right, title and interest in the same herein granted and conveyed shall revert to said J. W. Rabey, party of the first part----------and subject further to the reservation of the right to the parties of the first part to cut, for their own

use and for no other purpose, each year furing the running of this contract as much as and no more than six cords of wood and twelve hundred rails from the timber herein before described and conveyed. In addition to the purchase price herein mentioned the said party of the second part, his heirs or assigns, shall pay to said parties of the first part sixty dollars per annum for each year from this date during said period that said timber shall remain uncut. In other words should said timber be cut the first year said second party, his heirs or assigns, shall pay to said first parties the sum of sixty dollars and an additional sum of sixty dollars for each year thereafter or part thereof during said six years that he, or they, shall fail to remove the timber aforesaid and notify said first parties that they have completed cutting and removing the same.

Said parties of the first part further covenant that said party of the second part, his heirs or assigns, shall have the right to cut, build and construct such paths and bogy roads over and across the wooded land of said grantors as may be necessary for the purpose of removing the timber hereby conveyed as well as t e timber on the land of Mrs. Josephine Henderson known as the "David Henderson tract", provided the timber on said "Henderson tract" is removed before the completion of the cutting of the timber herein conveyed.

Said first parties covenant that they have the right to convey the timber to the grantee; that they have done no act to encumber the said timber; that the grantee shall have quiet possession of the said timber free from all encumbrances whatsoever; and that they will pay all dues, levies and assessments that may become a charge upon said land; and that they will execute such further assurances of

the said timber and rightsunder this contract to the said party of the second part as may be requisite------all of which covenants are subject to the condition and reservation aforesaid.

WITNESS the following signatures and seals.

_____(SEAL)

_____(SEAL)

Martin Walls to Alexander Mack.

This deed made and entered in to this 14th day of August, in the year one thousand eight hundred and seventy-seven, between Martin Walls and Maria L. Walls, his wife, of the County of Nansemond and state of Virginia, parties of the first part and Alexander Mack of the County of Nansemond and state of Virginia, party of the second part witnesseth: that in consideration of the sum of Three Hundred and Fifty ($350.00) Dollars secured to be paid by the party of the second part to the party of the first part, the said Martin Walls and Maria L. Walls, his wife, have granted, bargained, sold and conveyed with general warrantee unto the said Alexander Mack, the following property to wit: All that tract, piece or parcel of land situated, lying and being in the county of Nansemond, state of Virginia, and bounded and described as follows: The undivided half of the following land situated on the East side of the Somerton Road, about eight miles from Suffolk, known as the Spivey farm, adjoining the lands of Cornelius Savage, Dempsy Babb and others, containing one hundred acres, more or less, it being the same land that was sold to Martin Walls and Alexander Mack by Andrew Rabey and Emeline Rabey, his wife, by deed dated the first day of August, 1876, and of record in the Clerk's Office. The said Martin Walls and his wife conveyed the undivided half of the said land which belonged to the said Martin Walls by the deed aforesaid, to the said Alexander Mack, a plat of the said land is this day given to the said Alexander Mack by the said Martin Walls together with all, and singular the appertenances belonged to the same. The parties of the first part covenant that they have the right to convey the said land: that they have done no act to encumber the same: that the grantee shall have a quiet possession of the said land free from all

encumbrances, and that they, the said parties of the first part will execute such further assurances of the said lands as may be requisite.

Witness the following signature and seals.

Martin Walls, seal

Maria L. Walls, seal

Virginia, Nansemond County to wit:

I, R. H. Rawles, a Notary Public for the County of Nansemond in the state of Virginia, do certify that Martin Walls, whose name is signed to the writing above, bearing date on the 14th day of August, one thousand eight hundred and seventy-seven, has this day acknowledged the same before me in my county aforesaid, given under my hand this 14th day of August, 1877.

R. H. Rawles, Notary Public.

Virginia, Nansemond County to wit:

I, R. H. Rawles, a Notary Public of the County of Nansemond, in the state of Virginia, do certify that Maria L. Walls, the wife of Martin Walls, whose names are signed to the writing within, bearing date on the 14th day of August 1877, has this day personally appeared before me in my county aforesaid, and being examined by me privily and apart from her husband, and having the said writing fully explained to her, the said Maria L. Walls acknowledged the said writing to be her act, and declared that she had willingly executed the same and that she does not wish to detract it.

Given under my hand this fourth day of August, 1877.

R. H. Rawles, Notary Public,

In the Clerk's Office of Nansemond County Court, the 6th day of September, 1877.

This deed was received and with the certificates written thereon, admitted to record.

Teste,

P. B. Prentis, Clerk.

Walls

to

Mack,

Deed Book No. 6,

Page No. 207.

A. J. Rabey, to M. Walls and Mack.

This deed made this first day of August, one thousand eight hundred and seventy-six, betweed Andrew W. Rabey, and Emeline E. Rabey, his wife, of Nansemond county Virginia, parties of the first part and Martin Walls and Alexander Mack, jointly of South Oil City, in the state of Pennsylvania, parties of the second part witnesseth that in consideration of the sum of Seven Hundred ($700.00) Dollars, to them in hand, paid by the said parties of the second part, the receipt of which is hevily acknowledged, the said parties of the first part have granted, bargained, and sold, and by these presents do grant bargain and sell unto the said parties of the said parties of the second part with general warranty, the following property to wit: That parcel or tract of land in Nansemond County, on the East side of the Somerton roadabout eight miles from the town of Suffolk, known as the Spivey farm, on which Hilory Spivey now resides, adjoining the lands of Cornelius Savage, Dempsey Babb, and others, and containing one hundred acres, more or less, together with the privileges and appertenances belonging to the said land. The said parties of the first part covenant that they are lawfully seiged in fee simples of the said land, and have the right to convey the same: that they have done no act to encumbrance the said land: That the grantees shall have quiet posession of the said land, free from encumbrances, and that they will execute such other assurances.

Witness the following signatures and seals.

A. J. Rabey, seal

Emeline Rabey, seal

Nansemond County, to wit:

I, John W. Wright, a Notary Public for the County aforesaid, in the state of Virginia, do certify that Andrew Rabey, whose name is signed to the writing annexed, dated the first day of August, one thousand eight hundred and seventy-six, has acknowledged the same before me, in my said county. And I do further certify that Mrs. Emeline E. Rabey, the wife of said Andrew Rabey, whose names are signed to the said writing, personally appeared before me in my said county and being examined by me privily and apart from her said husband and having the said writing fully explained to her, she the said Emeline E. Rabey acknowledge the said writing to be her act: Declared that she willingly executed the same and did not wish to retract it.

Given under my hand this first day of August, 1876.

John W. Wright, Notary Public.

In the Clerk's Office of Nansemond County Court, the first day of August, 1876. This deed was received, and with the certificate written thereon, admitted to record.

Teste,

Peter B. Prentis, Clerk.

Andrew J. Rabey

to

Mack and Walls.

Deed Book No. 5,

Page No. 475.

Joseph W. Rabey to Matthew Munn.

This deed made this twenty-fourth day of June, in the year one thousand eight hundred and ninety-three, between Joseph W. Rabey, of Nansemond county Virginia, of the first part and Matthew Munn of Nansemond county, Virginia, of the second part, witness that in consideration of the sum of Twenty-five ($25.00) Dollars, the said J. W. Rabey does grant unto the said Matthew Munn, with general warranty all his right, title and interest at law or in equity with every kind and description, in and to every piece or parcel of land lying in Cypress Magisterial District, Nansemond County, Virginia, upon which the said Munn resides, adjoining the lands of the heirs of Hardy Duke deceased, David W. Henderson, heirs of Jim Babb deceased, F. W. Rawles, or his wife, Thomas W. Babb, Frank Rogers, Mrs. Emeline E. Rabey and P. J. Kernold, which interest, in the said land, was conveyed to the said Rabey by Edwin Spivey by deed dated January, tenth, 1890, and recorded January eleventh, 1890. See Deed Book No. 23, page 205.

The said grantor covenants that he has the right to convey the interest in said land to the grantee: that he has done no act to encumbrance the said land: that the grantee shall have quiet possession of the said land, free from all encumbrances, and that he, the said party of the first part, will execute such further assurances of the said land as may be requisite.

Witnesseth the following signature and seal.

J. W. Rabey, seal

State of Virginia, County of Nansemond, to wit:

I, Robert R. Prentis, as Commissioner in Chancery of the Circuit Court for the county aforesaid, in the state of Virginia, do certify that J. W. Rabey, whose name is signed to the writing hereto annexed, bearing date, the

twenty-fourth day of June, 1893.

R. R. Prentis, Commissioner in C.

County of Nansemond, to wit:

In the Office of the Clerk of the County Court, for the County of Nansemond, the 24th day of June, 1893, this deed was presented and with the certificate annexed, admitted to record.

Teste:

R. R. Smith, Clerk.

by- A. P. Gomer, D. C.

J. W. Rabey,

to

Matthew Munn.

Deed Book No. 26,
Page No. 442.

Alexander Mack and wife to Matthew Munn.

This deed made this seventh day of July, in the year one thousand eight hundred and eighty-seven, between Alexander Mack and Ann his wife, of the county of Nansemond in the state of Virginia, parties of the first part and Matthew Munn of the county and state aforesaid, party of the second part, witnesseth: that in consideration of the sum of Two Thousand ($2000.00) Dollars, the said parties of the first part, do grant with general warranty unto the said party of the second part, and his heirs and assigned forever the following property to wit: all that tract, piece or parcel of land situated, lying and being in Cypress Magisterial District, in Nansemond county, Virginia, estimated to contain one hundred and twelve acres, more or less, and bounded and described as follows: on the North, by the lands of Dempsey Babb, on the East by the lands of Thomas Babb, on the South by the lands of the estate of Cornelius F. Savage deceased, and on the West by the Somerton road: This being the contract of Hazard between a Vendor and a Vendee. The above tract of land is sold in gross and not by the acre. The lands hereby sold and conveyed, being those mentioned in Catlowing Deeds, to wit: The deed from Andrew J. Rabey and wife, dated and recorded the first day of August, 1876, to Martin Walls and wife, dated the fourteenth day of August, 1877, and recorded the sixth day of September, 1877, to said Alexander Mack, and the deed dated the third day of April,1886, from Andrew Henderson and wife Missouri Henderson, and Ellen Spivey, and recorded the third day of April, 1886, to said Alexander Mack, said three deeds being recorded respectively in the Clerk's Office of Nansemond county Court in Deed Book No. 5, page No. 475, in Deed Book No. 6, page NO. 207, and in Deed Book No. 16, page No. 338, to all three of which said deeds reference is here for a full description of the

measures and boundries of the land hereby sold and conveyed.

Together with all the appertenances belonging to the same. The said covenant that they have the right to convey the said land to the grantee that the grantee shall have quiet possession of the said land free from all encumbrances: that they, the said parties of the first part will execute such further assurances of the said land.

Witness the following sugnature and seals.

Alexander Mack, seal

Ann Mack, seal

State of Virginia, County of Nansemond, to wit:

I, Peter B. Prentis, a commissioner in chancery of the Circuit Court for the county aforesaid, in the state of Virginia, do certify that Alexander Mack, whose name is signed to the writing above, being dated on the seventh day of July, in the year one thousand eight hundred and eighty-seven has acknowledged the same before me in my county aforesaid.

Given under my hand this seventh day of July, in the year 1887.

Peter B. Prentis,

Commissioner in Chancery.

State of Virginia, County of Nansemond to wit:

I, Peter B. Prentis, a Commissioner in Chancery of the Circuit Court for the County of Nansemond, in the state of Virginia, do certify that Ann Mack, the wife of Alexander Mack, whose names are signed to the writing above, being dated on the seventh day of July, in the year 1887, personally appeared before me in the county aforesaid, and being examined by me privily and apart from her husband, and having the record aforesaid fully explained to her, she the said Ann Mack acknowledged the said writing to be her act, and declares that she has willingly executed the same and does not wish to detract it.

Given under my hand this seventh day of July in the year

eighteen and eighty-seven.

Peter B. Prentis,

Commissioner in Chancery.

In the Clerk's Office, of Nansemond county Court, the seventh day of July, 1887.

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

Teste.

Peter B. Prentis, Clerk.

Alexander Mack
a to
Matthew Munn.
Deed Book No. 18,
Page No. 489.

Matthew Munn and wife to J. W. Rabey.

Thid deed made this fifteenth day of January, in the year, one thousand eight hundred and ninety-four, between Matthew Munn and Nellie, his wife, of the county of Nansemond and state of Virginia, of the second part, and Joseph W. Rabey of the said county and state, of the said part, witness that in consideration of the sum of Twelve hundred ($1200.00)Dollars, the said Matthew Munn and Nellie, his wife, do grant unto the said J. W. Rabey and his heirs and assigned forever with general warranty, all that certain tract piece or parcel of land situated in Cypress Magisterial District, in the county of Nansemond, and state of Virginia, containing by estimation, one hundred and nineteen acres, more or less, and bounded on the North by the land of Walter King, formerly the Dempsey Babb land, on the East by the lands of Thomas Babb, on the South by the land of the estate of Cornelius W. Savage, deceased, and on the West by the Somerton county-road, the said land being the same which was conveyed to said Matthew Munn in part by deed from Alexander Mack and wife, dated the seventh day of July, 1887, and recorded in the deed book NO. 18, page 488, in the Clerk's Office of Nansemond County Court, and in note by deed from Joseph W. Rabey, dzted July, 1893, and recorded in Deed Book No._____ page No._____, in the said Clerk's Office, together with all, and singular the appertenances belonging to the said land.

The said Grantors covenant that they have the right to convey the said land to the grantee; that they have done no act to encumber the said land: that the grantee shall have quiet possession of the said land, free from all encumbrances: and that the said parties of the first part will execute such further assurances of the said land as may be requisite.

Witness the following signatures and seals.

M. Munn

M. Munn, seal

Nellie M unn, seal

State of Virginia, County of Nansemond, to wit:
I, Lee Britt, a commissioner in chancery of the Circuit Court for the county aforesaid, in the state of Virginia, do certify that Matthew Munn and Nellie Munn, his wife, whose names are signed to the writing hereto annexed, being dated the fifteenth day of January, one thousand eight hundred and ninety-four, have acknowledged the same before me, in my county aforesaid.

Given under my hand this fifteenth day of January, 1894.

Lee Britt, Commissioner in C.

County of Nansemond, to wit:

In the Office of the Clerk, of the county and for the county of Nansemond, the fifteenth day of January, 1894. This deed was presented, and with the certificate annexed, admitted to record.

Teste.

R. R. Smith, Clerk,
A. P. Gouser, D. C.

Alexander Mack and wife to Matthew Munn.

Matthew Munn and wife

to

J. W. Rabey.

Deed Book No. 34.

Page No. 36.

Edwin Spivey to Joseph W. Rabey.

This deed made the tenth day of January, one thousand eight hundred and ninety, the said Edwin Spivey of the county of Nansemond and state of Virginia, of the one part and Joseph W. Rabey of the same county and state, of the other part, witnesseth: that said Edwin Spivey in consideration of the sum of Sixty-five ($65.00) Dollars, doth grant with general warranty upto the said Joseph W. Rabey and his heirs and assigns forever the following real estate to wit: First an undivided one fourth (1/4) interest in the realty represented by heir-ship in his own right: also an undivided one third (1/3) interest in the realty represented by the heir-ship in the right of his sister, Peggy Ann Spivey deceased. They,all of which realty is contained in the bank of the undivided realty, trade or parcel of land situated, lying and being in the upper Parish and Cypress Town-ship of Nansemond county, and known as the realty or lands of which his father, Theophelus Spivey died seized and possessed containing seventy nine acres, more or less, and bounded by the lands of the heirs of Hardy Duke, deceased, David W. Henderson, lands of James Babb, deceased, F. W. Rawles or wife, Thomas W. Babb, Mathew Munn, together with all and singular the appertenances belonging to the same. And the said Edwin Spivey covenants that he has the right to convey the said undivided interest of said land to the grantee that the said grantee shall have quiet pssession of said undivided interest of said land, that he has done no act with intention to encumbrance the said undivided interest of said land: and that he will execute such appearances of the said undivided interests of said land as may be requisite: and that he will forever depend with the title,herefore granted, and conveyed against all

claims, especially such as may derive from the fraudulent claims of one Hilary Spivey, deceased.
Witnesseth the following signature and seal.

Witness
A. J. Rabey
Sarah R. Duke

Edwin Spivey.

In the Clerk's Office of Nansemond County Court, the eleventh day of January, one thousand eight hundred and ninety.

This deed was presented and acknowledged by Edwin Spivey, and admitted to record.

Teste.

C. H. C. Ansey, Jr. D. C.

Edwin S. Ivey to

Joseph M. Rabey,

Deed Book No. 23,

Page No. 205.

This Deed,

made the first day of April in the year of our Lord one thousand eight hundred and eighty-five between Wallace Kilby and Maggie T. ——— his wife of the County of Nansemond in the State of Virginia of the one part, and Beverly P. Baker ——— of the same County and State of the other part, Witnesseth: That in consideration of the sum of Seventy-five (75) dollars ——— the said Wallace Kilby and Maggie T. ——— his wife, do grant with general warranty, unto the said Beverly P. Baker ——— and to his heirs and assigns, forever, the following real estate, to wit: A one-fourth (1/4) undivided fee-simple interest lately owned by Hilary Spivey and now subject to the dower of his widow, Sarah J. Spivey, in all that certain tract or parcel of land situated in Cypress Magisterial District in said County and State and containing seventy-five acres, more or less, and bounded by the County road and the lands of Thomas W. or George W. Babb and David Henderson and the land upon which Dempsey Babb lately lived, and being the same land which by deed dated the 20th. day of February A.D. 1879 and recorded the 22nd. day of February A.D. 1879 on page 279 of deed book No. 7, was sold and conveyed by Wilbur J. Kilby Commissioner, unto said Wallace Kilby

together with all and singular the appurtenances belonging to the same.

And the said Wallace Kilby —— covenants that he has the right to convey the said land to the said grantee; that the said grantee shall have quiet possession of the said land; that he has done no act to encumber the said land; and that he will execute such further assurances of the said land as may be requisite.

Witness the following signatures and seals:

Wallace Kilby [SEAL.]

Witnesses: Maggie T. Kilby [SEAL.]

State of Virginia,
County of Nansemond **To wit:**

I, Wilbur J. Kilby a Notary Public in and for the county aforesaid in the State of Virginia, do certify that Maggie T. Kilby the wife of Wallace Kilby —— whose names are signed to the writing above, bearing date the first day of April 1885, personally appeared before me in the county aforesaid, and being duly examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she the said Maggie T. Kilby acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 4th. day of April eighteen hundred and eighty-five

Wilbur J. Kilby
Notary Public

Virginia,
County of Nansemond **To wit:**

I, Wilbur J. Kilby, a Notary Public in and for the said county, in the State of Virginia, do certify that Wallace Kilby —— whose name is signed to the writing above, bearing date the first day of April 1885, has acknowledged the same before me in the county aforesaid.

Given under my hand this 4th day of April 1885

Wilbur J. Kilby
Notary Public

In the Clerk's Office of Nansemond County Court, the 4th: day of April 1885
This Deed was presented with the Certificates annexed and admitted to record.

Teste: Peter B. Prentis Clerk

Examined & verified

Deed of Bargain and Sale.

Wallace Kelby & wife

TO

Beverly P. Baker

April 4th 1885. Presented in the Clerk's Office with the certificates annexed & admitted to record.

Recorded Deed Book No 14 Page 477

Tax Recd. & fee paid $1.75

This Deed,

made the twelfth day of October in the year of our Lord one thousand eight hundred and eighty six between Beverley P. Baker and Lydia M. his wife and John G. Baker and Sarah G. his wife of the County of Nansemond in the State of Virginia of the one part, and Thomas W. Babb of the same County and State of the other part, **Witnesseth:** That in consideration of the sum of One Hundred and twenty five (125$) Dollars the said Beverley P. Baker and Lydia M. his wife & John G. Baker and Sarah G. his wife, do grant with general warranty, unto the said Thomas W. Babb and to his heirs and assigns, forever, the following real estate, to wit: all the right title and interest in a certain tract or parcel of land situated in Cypress magisterial District in the County of Nansemond and State of Virginia, that was conveyed to the said Beverley P. Baker by Wallace Kelly and Maggie J. his wife by Deed dated April 1st 1885 and of record in the Clerks Office of the said County on deed book no 14 Page 477. A certain one fourth undivided fee simple interest lately owned by Hilary Spivey and now subject to the Dower of his widow, Sarah G. Spivey at this time Sarah G. Baker the wife of John G. Baker, and they the said John G. Baker and Sarah G. his wife doth also by this Deed Sell and convey unto the said Thomas W. Babb, the Dower in said premises, with all their right title and interest, free from the claims of all and any whomsoever.

together with all and singular the appurtenances belonging to the same.

And the said parties of the first part covenants that they have the right to convey the said land to the said grantee; that the said grantee shall have quiet possession of the said land; that they have done no act to encumber the said land; and that they will execute such further assurances of the said land as may be requisite.

Witness the following signatures and seals:

Beverly P. Baker [SEAL.]

Witnesses: Lydia M. Baker [SEAL.]

John J Baker (SEAL)

Sarah J. her X Baker (SEAL.)
mark

State of Virginia, } **To wit:**
County of

in and for the county aforesaid in the State of Virginia, do certify that the wife of whose names are signed to the writing above, bearing date the day of 18 , personally appeared before in the county aforesaid, and being duly examined by privily and apart from her husband, and having the writing aforesaid fully explained to her, she the said acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under hand this day of eighteen hundred and

In the Clerk's Office of Mausemend County Court, the 12th day of October, 1886.

This, the foregoing Deed was presented and acknowledged by Beverly P. Baker and Lydia M. his wife, and John J. Baker and Sarah J. his wife, to be their act and deed. And the said Lydia M. Baker and Sarah J. Baker his wife, being examined by me, privily and apart from their respective husbands, and having said Deed fully explained to them, severally, acknowledged the same to be their act and deed and declared that they had willingly executed the same and wished not to retract the whereupon said Deed is admitted to record.

Teste: Peter B. Prentis. Clerk

Virginia, } **To wit:**
County of

I, in and for the said county, in the State of Virginia, do certify that whose name is signed to the writing above, bearing date the day of 18 , has acknowledged the same before me in the county aforesaid.

Given under my hand this day of 18

Deed of Bargain and Sale.

Beverly P. Barker & wife & al

TO

Thomas W. Babb

1886
Octo: 12th. Presented and acknowledged in the Clerk's Office by Beverly P. Barker & wife, and John J. Barker & wife, & LAR

(Examined & Verified)

Recorded Deed Book No. 17 Page 229.

Tax Recdg. fee paid $1.75 cck

In the Circuit Court of Nansemond County-

John H.Babb-

VS

Joseph W.Rabey and Others-

This cause came on this day to be heard on the bill and answer, process having been served on the defendants,and on general replication to said answer,and was argued by counsel.

On consideration whereof,it appearing to the Court that the issue involved in this cause touching the title to the nineteen acres of land set out and described in the bill has been by the execution of a deed this day from Joseph W. Rabey and wife to John H. Babb. satisfactorily settled without the Court passing upon said issue, and by consent of the parties to the entering of this decree shown by endorsement hereon by counsel,the Court doth adjudge, and the same is stricken out order and decree that this cause be dismissed from the docket, and that the costs of the same be paid by the said plaintiff.

J. H. Bobb

vs.

Joseph L. Robey et ux wife

Final decree

Entered, October 13th-
1909

Thos. L. Gilmore,

Entered in Chancery Order
Book No. 4. Page 372

We consent that this
decree be entered

Lee Britt
atty for J. K. Robey

H. H. Bowers
atty. for John H. Bobb

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

J. H. Babb.....Complainant.

vs.

Joseph W. Rabey et als.....Defendants.

The answer of C. J. Dennis, trading as Nansemond Lumber Company, to a bill of complaint filed against him and others in the Circuit Court of Nansemond County by J. H. Babb, complainant.

This respondent, reserving to himself the benefit of all just exception to the said bill, for answer thereto, or to so much thereof as he is advised it is material he should answer, answers and says that it is true that on the 23rd day of December, 1905, Joseph W. Rabey, in consideration of the sum of one thousand dollars, sold and conveyed to your respondent all the pine timber twelve inches and upwards in diameter across the stump fifteen inches from the ground at the time of cutting on that tract of land which was conveyed to Joseph W. Rabey by Matthew Munn by deed duly recorded in the Clerk's Office of Nansemond County in D. B. No. 34, page 56.

That all other allegations of said bill, not affecting the interest of this respondent, are neither denied nor affirmed and so far as they are material strict proof of the same is hereby called for.

This respondent answering particularly the allegations of complainant's bill respectfully says that as it appears that complainant does not deny that the

timber sold this respondent was the property of Joseph W. Rabey and as the said Joseph W. Rabey also claims that he had the right to convey said timber, and as the same was conveyed with general warranty, it is apparent that this respondent has no material interest in this suit.

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

Nansemond Lumber Co

By C. J. Dennis

STATE OF VIRGINIA,
To-wit:
Nansemond County.

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

C. J. Dennis

Taken, sworn to and subscribed before me, James U. Burges, a Notary Public in and for the County and State aforesaid, in my County aforesaid, this_____ day of February, 1909.

James U. Burges

Notary Public.

Answer of E. J. Nemits.
Trading as Nansemond Lbr. Co.

J. H. Dabb

vs.

Joseph W. Askey et als.

JAMES U. BURGES,
ATTORNEY AT LAW,
POST OFFICE BUILDING,
SUFFOLK, VA.

ALVAH BUSHNELL CO., LAW STATIONERS, 942 MARKET ST., PHILADELPHIA, PA.

AMENDED BILL.

To the Honorable James L. McLemore, Judge of the Circuit Court of Nansemond County.

J. H. Babb.....Complainant,

vs.

Joseph W. Rabey and others.....Defendants.

Complaining showeth unto the court your orator John H. Babb the following case:

That your complainant is now in possession and has a title to a certain tract of land situated near Nurneyville, Nansemond County, Virginia, and is what is known as part of the farm of Thomas W. Babb, father of your complainant, and also known as the Hilary Spivey tract of land, and containing nineteen and three-fourths acres, by survey. This said tract of land was assigned to your complainant in a partition suit brought by the heirs of Thomas W. Babb, in the year 1908, and said tract of land was conveyed to Thomas W. Babb by Beverly P. Baker and wife, October 12th, 1886, and recorded in the Clerk's Office of Nansemond County, in Deed Book No. 17, page 229, and it being the same land that was conveyed to Wallace Kilby and wife ~~by Beverly P. Baker~~ Beverly P Baker by deed dated April 1st, 1885, and recorded in said Clerk's Office in Deed Book No. 14, page 477, and being the same land conveyed by Wilbur J. Kilby, Special Commissioner, to Wallace Kilby, deed dated February 20th, 1879, and recorded in said Clerk's Office in Deed Book No. 7, page 279, and also the decree authorizing Wilbur J. Kilby, Commissioner, to transfer said land was entered on the 10th day of April, 1878, and it being the same land that was conveyed to Hilary Spivey by Edwin Spivey in 1860, which will be found in deed of Hilary Spivey to F. W. Rawls recorded in said Clerk's Office in Deed Book No. 6, page 23.

Your complainant further states that Hilary Spivey from whom he gets his title was in the possession of this tract of land containing nineteen and three-fourths acres forty-eight years ago.

Your complainant further states that before the war Theophilus Spivey owned a tract of land containing seventy-five acres, more or less, and that the said Theophilus Spivey died leaving four children, namely: Missouri Spivey, who married A. J. Henderson, Ellen Spivey, Edwin Spivey, and Peggy Ann Spivey. That said tract of land was partitioned and divided among the four children of the said Theophilus Spivey, and that the portion of Edwin Spivey containing nineteen and three-fourths acres was set apart to him, and which is the nineteen and three-fourths acres this day owned and possessed by your complainant, John H. Babb. Edwin Spivey sold said tract of land containing nineteen and three-fourths acres to Hilary Spivey, deed duly executed and recorded in the Clerk's Office of the Circuit Court of Nansemond County in 1860.

Your complainant has stated the chain of title through which he claims, and further states that all of the deeds speak of one-fourth undivided interest in a certain tract of land except the deed of Hilary Spivey to F. W. Rawls, which conveys all the right and interest that the said Hilary Spivey had in said property without saying anything about any undivided interest.

Some time prior to the year 1879 before said property was conveyed to Wallace Kilby, Beverly P. Baker made a survey of this nineteen and three-fourths acres, and C. E. Summer, Dempsey Babb, A. J. Rabey, and F. W. Rawls, and one more unknown to your complainant now, re-established the lines that were established in 1860, by and with the consent of the parties then interested. After said property was conveyed to Beverly P. Baker, Beverly P. Baker again with the consent and in the presence of the adjoining owners to

said tract of land, re-established the lines, which lines are there today well marked. Your complainant is not asking your honor to establish or re-establish any lost or unsettled line, but to remove the cloud on the title to said property.

Your complainant further states that the deed of Edwin Spivey, which was dated 1860, conveying said land to Hilary Spivey, through whom your complainant claims said land, was destroyed when the Clerk's Office was burned in 1866, and your complainant and those through whom he claims the chain of title, have been in quiet and peaceable possession for forty-eight years unmolested by anyone, and that while the deeds, through which your complainant claims, describes the land as an undivided one-fourth interest, it was inadvertently done by copying after the old deeds.

Your complainant further states that he has been advised that the defendant, Joseph W. Rabey, has made some threats about the title to said tract of land, and since such has been done your complainant does now wish to be embarrassed over his title by the said Rabey, or any one else, and your complainant prays that the cloud, if there be one to said tract of land, be removed before the witnesses, who know the most about the title, die. Your complainant is inclined to believe that the said Joseph W. Rabey is waiting for certain people to die and then possibly he thinks he will have a better opportunity to set up his claim to said tract of land, especially is your complainant impressed with this idea since the defendant is inclined to delay the progress of this said suit. Your complainant has stated above that he and the ones through whom he claims have been in possession of the said tract of land for forty-eight years, holding the same against the claims of all persons, and your complainant prays that your honor may enter such decree that will quiet the title and remove the cloud on said tract of land.

Your complainant further avers that January 10th, 1890, Edwin Spivey executed a deed to Joseph W. Rabey, in which it appears that the said Edwin Spivey undertakes to convey this said tract of land to Joseph W. Rabey, said deed recorded in the Clerk's Office of the Circuit Court of Nansemond County in Deed Book No. 23, page 205. The said Edwin Spivey undertook to convey to Joseph W. Rabey what he had already conveyed thirty years previous to this to Hilary Spivey, and had been out of the possession of said tract of land for thirty years when said deed was executed that undertook to convey said tract of land, or his interest in said land, to Jpseph W. Rabey. Your complainant further states that the said Edwin Spivey has told him if there is such a deed in existence, it was not read or explained to him, that he never did of his knowledge execute any deed conveying the interest that he had sold to Hilary Spivey to Joseph W. Rabey, and your complainant believes that said deed was obtained by fraud and for the purpose of interfering and harassing your complainant, or owner or owners of said tract of land, after those who know the most about the said land are out of the way by death or otherwise.

In tender consideration whereof, and for as much as your complainant is remediless in the premises save by the aid of a court of equity where matters of this kind are alone properly cognizable, your complainant prays that the said J. W. Rabey and Mary J. Rabey, his wife, and C. J. Dennis, trading as the Nansemond Lumber Company, may be made parties defendant to this bill, and required on their oaths to answer the same, that proper process issue, that all proper orders and decrees may be made, and that such decree may be emtered that will quiet the title and remove the cloud from said tract of land, and that the said deed of Edwin Spivey, attempting to convey his interest in said tract of land to Joseph W. Rabey, be cancelled and annulled, as far as it relates to Edwin Spivey's interest

in the Hilary Spivey tract of land, and proper inquiries be directed, and that all such other, further and general relief may be afforded your complainant as the nature of his case may require, or to equity shall seem meet.

And your complainant will ever pray, etc.

Counsel
H. Bowden

J. H. Bobb

5 E. Everett Jr
J. H. Babb
R ZZ
Rabey et al

Amended Bill

To the Honorable James L. McLemore, Judge of the Circuit Court of Nansemond County.

J. H. Babb.....Complainant,

vs. Second Rules September, 1908.

Joseph W. Rabey and others.....Defendants.

Complaining showeth unto the court your orator John H. Babb the following case:

That your complainant is now in possession and has a title to a certain tract of land situated near Nurneyville, Nansemond County, Virginia, and is what is known as part of the farm of Thomas W. Babb, father of your complainant, and also known as the Hilary Spivey tract of land. This said tract of land was assigned to your complainant in a partition suit brought by the heirs of Thomas W. Babb, in the year 1908, and said tract of land was conveyed to Thomas W. Babb by Beverly P. Baker and wife, October 12th, 1886, and recorded in the Clerk's Office of Nansemond County, in Deed Book No. 17, page 229, and it being the same land that was conveyed by Wallace Kilby and wife to Beverly P. Baker by deed dated April 1st, 1885, and recorded in said Clerk's Office in Deed Book No. 14, page 477, and being the same land conveyed by Wilbur J. Kilby, Special Commissioner, to Wallace Kilby, deed dated February 20th, 1879, and recorded in said Clerk's Office in Deed Book No. 7, page 279, and also the decree authorizing Wilbur J. Kilby, Commissioner, to transfer said land was entered on the 10th of April, 1878, and it being the same land that was conveyed to Hilary Spivey by Edwin Spivey in 1860, which will be found in deed of Hilary Spivey to F. W. Rawls recorded in said Clerk's Office in Deed Book No. 6, page 23.

Your complainant further states that Hilary Spivey from whom he gets his title was in the possession of this

tract of land forty-eight years ago, and your complainant further states that the said Joseph W. Rabey has never, nor has any one through whom he claims, had possession of this tract of land within the forty-eight years past.

Your complainant further states that before the war that this tract of land of which this is one fourth was known as the Thepphilus Spivey tract, and that the said Thepphilus Spivey died leaving four children, namely: Missouri Spivey, who married A. J. Henderson, Ellen Spivey, Edwin Spivey, and Peggyann Spivey. Edwin Spivey sold and conveyed his interest to Hilary Spivey, who was his uncle, and afterwards Peggyann Spivey died and Edwin Spivey conveyed his right in her interest to J. W. Rabey, and in said deed also conveyed a one-fourth interest which he had thirty years before conveyed to Hilary Spivey, his uncle.

Your complainant further states that the record shows J. W. Rabey's title as follows: Edwin Spivey to J. W. Rabey, our-fourth interest in the Theophilus Spivey tract and also one-third of the estate of his sister, Peggyann Spivey, who then was dead; deed dated January 10th, 1890 and recorded in the Clerk's Office of Nansemond County in Deed Book No. 23, page 205; Matthew Munn and wife to J. W. Rabey, deed dated January 15th, 1894, and recorded in said Clerk's Office in Deed Book No. 34, page 36. This being the land that was conveyed to the said Matthew Munn by two deeds, one executed by Alexander Mack and wife dated July 17th, 1887 and recorded in Deed Book No. 18, page 489, and the other deed executed by J. W. Rabey dated the 24th day of June, 1893 and recorded in Deed Book No. 26, page 442, and the tract conveyed in the first deed recorded in Deed Book No. 18, page 489, was conveyed to Mack and Walls by deed executed by Andrew J. Rabey and wife dated August 1st, 1876, and recorded in Deed Book No. 5, page 475, Walls conveying his interest to Mack,

and also conveyed to the said Mack by deed executed by A. J. Henderson and Missouri, his wife, and Ellen Spivey, dated April 3rd, 1886, and recorded in Deed Book No. 16, page 338, and the other part was conveyed to the said Matthew Munn by J. W. Rabey by deed dated June 24th, 1893, and recorded in Deed Book No. 26, page 442.

Your complainant further states that J. W. Rabey, one of the defendants was one of the Commissioners appointed to assign dower and to partition the tract of land of which your complainant's father died, seized, and possessed, but was delayed in getting there on that day and did not sign the report of the Commissioners, but asked if it was necessary that he would do so, and he was acquainted fully with the report of the Commissioners, and fully knew that the said Commissioners had assigned this said tract that your complainant now claims to your complainant, and never made any claim whatever to said tract of land, but in settling the estate your complainant was advised that there was some question about the line, and that it would be well for your said complainant and his neighbor, Mr. J. W. Rabey, to get together and have the line which had been well established and well marked, to be made a record, and it was then that Mr. Rabey began to claim that he was entitled to this property. Your complainant further states that J. W. Rabey never expected to make any such claim, and that his acts heretofore have been entirely inconsistent with his present claims. The said J. W. Rabey sold and conveyed to C. J. Dennis, trading as the Nansemond Lumber Company, all of the standing lumber on said tract of land that the said J. W. Rabey is in possession of, and which is three-fourths of the Theophilus Spivey tract of land, and said deed is recorded in the Clerk's Office of Nansemond County in Deed Book No. 60, page 254. Your complainant is advised that he sold the timber on said land for One Thousand

($1000.00) Dollars.

Your complainant further states that he is in possession of this land and that the deed from Edwin Spivey in 1860 conveying said land to Hilary Spivey, through whom your complainant claims said land, was destroyed when the Clerk's Office was burned in 1866, and your complainant and those through whom he claims the chain of title have been in quiet and peaceable possession for forty-eight years unmolested by J. W. Rabey, or any one else.

Your complainant prays that your Honor may enter such decree that will quiet the title and remove the cloud, if there is any, that now exists on said land, and that the line that has stood between the two tracts for more than forty years may be established and definitely settled, so that there will be no hereafter about the question of a doubtful title. Your complainant further states that he is anxious to have the same settled before the witnesses that know the most about said land die out, as many of them are already dead, and the others are very old.

In tender consideration whereof, and for as much as your complainant is remediless in the premises save by the aid of a court of equity where matters of this kind are alone properly cognizable, your complainant prays that the said J. W. Rabey and Mary J. Rabey, his wife, and C. J. Dennis, trading as the Nansemond Lumber Company, may be made parties defendant to this bill, and required on their oaths to answer the same, that proper process issue, that all proper orders and decrees may be made, and proper inquiries be directed, and that all such other, further and general relief may be afforded your complainant as the nature of his case may require, or to equity shall seem meet.

And your complainant will ever pray, etc.

John H. Bobb

K. C. Conference Ass'n.
John H. Bobb
vs Bell
Joseph W. Raby et ale

J. N. Babb

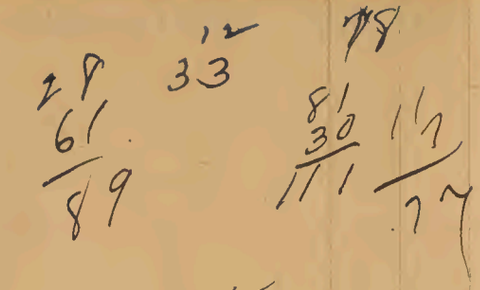
1955 In Chancery

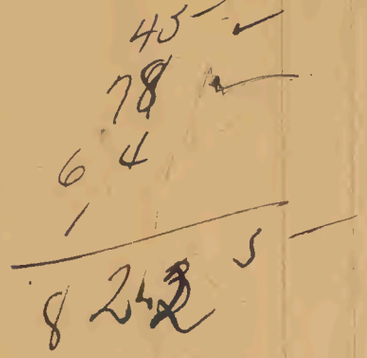
Joseph Rabey & others

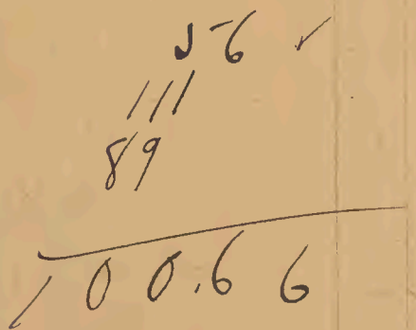
1908 Sept. 15th Process issued returnable to September Rules third Monday.

" " 21. Process returned executed on defendants. Bill filed and decree nisi ~~confirmed~~

" Oct 15th Decree nisi confirmed and cause set for hearing.







Chauncey Notes

S E Everett Esq.

J. N. Babb

vs } In Chancery

Joseph Rabey et Ux

1909

October 13th

Final Decree