1933-205 Chancery Causes: City of Portsmouth 241

Nansemond Co (Suffolk)

vs

Joseph T. Williams

Kilby, Yates

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

City of Portsmouth.....Complainant

v. IN CHANCERY

J. T. Williams.....Defendant

Leave is hereby granted defendant to file his answer in the above styled cause, and the same is accordingly this day filed.

VIRGINIA:

IN THE CIRCUIT COURT
OF NANSEMOND COUNTY

CITY OF PORTSMOUTH

v.

J. T. WILLIAMS

ORDER

Enter Dec. 11. 1929.
L. W. Lomax

Chancery Order Book
No. 6 Page 298

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300. Code 1919, Sec. 6061

# The Commonwealth of Virginia,

*To the Sheriff of the County of* Nansemond, *Greeting:*

WE COMMAND YOU, That you summon Joseph T. Williams

to appear at the Clerk's office of the Circuit Court of the Co. of Nansemond at the rules to be held for the said Court on the 1st Monday in April, 1929, to answer a bill in chancery, exhibited against him in our said Court by City of Portsmouth, a municipal corporation

And have then there this writ. Witness Paul J. Powell, Clerk of our said Court, at the court-house, the 30th day of March, 1929, and in the 153rd year of the Commonwealth.

Paul J. Powell, Clerk

By Alice A Whitehurst, D.C.

Originals

No. 300

City of Portsmouth

vs. } SUBPOENA IN CHANCERY

Joseph T. Williams

Jas. W. Corbett p. q.

To Fifth April Rules,

Nansemond Co. Circuit Court.

Executed on the 30 day of March 1929, within the County of Nansemond, State of Virginia, by delivering a true copy of the within summons [illegible] to Joseph T. Williams in person.

E B Rawles

By J C Taylor
Deputy Sheriff of Nansemond County

City of Portsmouth,
a municipal corporation,

v.

Joseph T. Williams.

IN CHANCERY.

To the Clerk of the Circuit Court of Nansemond County, Virginia:

Issue summons in Chancery to First April, 1929,

Rules.

R. L. Barclay
James H. Corbitt p.q.

VIRGINIA:

IN THE CIRCUIT COURT
OF NANSEMOND COUNTY.

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City of Portsmouth,
a municipal corporation,

v.

Joseph T. Williams.

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MEMORANDUM

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IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA:

City of Portsmouth.....Complainant

vs. IN CHANCERY

Joseph T. Williams..... Defendant

DECREE

This cause, in which process has been duly served on the defendant, Joseph T. Williams, came on this day to be heard upon the bill of the complainant with affidavit, and its exhibits, and the demurrer thereto of the defendant, and was argued by counsel.

Upon consideration whereof, the Court having maturely considered the pleadings, and the exhibits filed with the bill, is of the opinion that the bill is sufficient in law for the complainant to have and maintain its suit against the defendant, and it is,therefore, considered by the Court that the demurrer to the said bill be overruled; and, upon the prayer of the bill, an injunction is granted the complainant enjoining and restraining the defendant, his agents, attorneys and any and all others, from further proceeding in the action of ejectment now pending in the Circuit Court of Nansemond County, Virginia, brought by the said defendant, Joseph T. Williams, against the complainant, City of Portsmouth. This injunction shall be in force from the date this decree is entered, and effective for and during the three months next thereafter. And it appearing to the Court that the complainant, City of Portsmouth, is a municipal corpora-

tion, and that it would be improper to require bond from it, the foregoing injunction is awarded to take effect without bond.

And it further appearing to the Court that it would be proper to bring to an early settlement the matters and things in controversy between the parties hereto, the complainant, City of Portsmouth, is hereby directed and required, within forty-five (45) ~~thirty~~ days after the filing of an answer herein by the defendant, to begin the taking of its evidence in support of the said bill, and to speed the further hearing of the cause as rapidly as may be convenient and practicable.

And the Court doth reserve,

IN THE CIRCUIT COURT OF
NANSEMOND COUNTY, VIRGINIA:

City of Portsmouth,
Complainant

vs. IN CHANCERY

Joseph T. Williams
Defendant

DECREE

Entered this Decree

D. Vernon Burrell
Judge

10/7/24

Chancery Order Book
No. 6 Page 282

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

| | | |
|---|---|---|
| CITY OF PORTSMOUTH | ) | |
| | ) | |
| v. | ) | ORDER |
| | ) | |
| JOSEPH T. WILLIAMS. | ) | |

It appearing to the court that there has been no order or proceeding in this cause, or in the common law action of J. T. Williams v. City of Portsmouth, et als., for more than two years, except to continue them, and that the clerk of the court has notified counsel of record of the parties in interest, in writing, of this proposed order, at least fifteen days before the entry of such order, and no objection being made to the entry thereof, it is ordered that this cause be struck from the docket.

Chancery D. Book

VIRGINIA:

IN THE CIRCUIT COURT
OF NANSEMOND COUNTY.

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CITY OF PORTSMOUTH

v.

JOSEPH T. WILLIAMS.

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ORDER OF DISMISSAL

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7/25/33
I have seen this decree
Thos. L. Woodward

(case # 241)

Entd July 25. 1933.
Jas. L. Gilmore

Chancery Order
Book 7: page 88

{ also see order
{ entered July 15, 1933
{ on page 84

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

City of Portsmouth.....Complainant

v. IN CHANCERY

J. T. Williams.....Defendant

Answer of J. T. Williams to a bill of complaint filed against him in the Circuit Court of Nansemond County by the City of Portsmouth, Complainant.

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

1. Defendant denies that the City of Portsmouth has power to acquire, other than by purchase or condemnation, any property of any kind, for any purpose, and denies that it has the right, by purchase, condemnation, or otherwise, to acquire any property of any kind that is not necessary for its governmental functions.

2. Defendant neither admits nor denies the matter set forth in paragraph "2" of complainant's bill, and calls for strict proof thereof, but also says that the City of Portsmouth did not acquire all of Lake Kilby from Portsmouth, Berkley and Suffolk Water Company but only a part thereof, if any.

3. Respondent says that it may be true that Portsmouth Water Company acquired a part of Kilby's Mill as set forth in paragraph "3", but denies that Portsmouth Water Company developed Kilby's Mill Pond into a part of its water works system, and named it Lake Kilby, and likewise denies that Portsmouth and Suffolk Waterworks Company was successor in title to Portsmouth Water Company, or that there was any consolidation of the above companies so as to form one

one corporation by the name of Portsmouth, Berkley and Suffolk Water Company, and also denies that Portsmouth, Berkley and Suffolk Water Company, maintained, and operated Lake Kilby as a necessary part of the water works for supplying the inhabitants of the City of Portsmouth with water, and further says that the said companies, if they ever existed, were mere private corporations, operating for private profit, without regard to the necessities of the citizens of Portsmouth.

4. Respondent denies in detail and in toto, and says it is not true, the assertion set forth in paragraph "4" of complainant's bill, that the top of the flood gates in the dam at Lake Kilby fixing the maximum elevation of the water in said Lake was at the same level at the time of the institution of respondent's action of rejectment against the City of Portsmouth, as the top of the flood gates in the said dam, when Lake Kilby was known as Kilby's Mill Pond, and calls for the strictest proof thereof in every detail.

5. Respondent says that paragraph "5" of complainant's bill is true.

6. Respondent denies that Portsmouth Water Company developed Kilby's Mill Pond, or that it was a necessary part of the water works system for supplying inhabitants of the City of Portsmouth with water; denies that John Z. Yates had knowledge of the rebuilding of the flood gates in the dam, and denies that Portsmouth Water Company expended any sums of money whatsoever in constructing and completing any flood gates, or other works at Lake Kilby, and that even if such work was done more than forty years ago, which respondent expressly denies, the said work did not interfere with, or damage, the property of John Z. Yates, nor flood the same as the City of Portsmouth is now doing, and respondent further says that the gates in the dam at Lake Kilby were not rebuilt by the Portsmouth, Berkley and Suffolk Water Company, but that the Ports-

mouth, Berkley and Suffolk Water Company destroyed the gates then existing, after it acquired Lake Kilby, raised the dam thereof more than ten feet, put in flood gates at an entirely different place, and raised the elevation of the water in Lake Kilby not less than seven feet; that the said John Z. Yates had no knowledge that the Portsmouth, Berkley and Suffolk Water Company intended, by any means whatsoever, to raise the level of the water in Lake Kilby, nor that the said Portsmouth, Berkley and Suffolk Water Company had expended the sums necessary for the construction work it did at Lake Kilby; that the said John Z. Yates then and there, when the elevation of the water in Lake Kilby affected him, made known that fact to the Portsmouth, Berkley and Suffolk Water Company, and that the Portsmouth, Berkley and Suffolk Water Company promised to pay John Z. Yates for the said land in controversy in respondent's action of ejectment now pending in the Circuit Court of Nansemond County, but the said Portsmouth, Berkley and Suffolk Water Company, and its successors in title, the City of Portsmouth, have failed to meet the promise so made to the said John Z. Yates and your respondent, both of whom have made known their rights, and insisted thereon ever since the elevation of the water in Lake Kilby was raised from its former level to its present level.

7. Your respondent says that the City of Portsmouth knew at the time it purchased Lake Kilby that the present level of Lake Kilby flooded your respondent's land; that it bought the said Lake Kilby with knowledge of your respondent's rights, and nevertheless, proceeded to buy the said property knowing that it could not acquire title except by additional purchase or condemnation to all of the land that was part of the time flooded by the waters of Lake Kilby as at present constituted.

8. Your respondent says that paragraph "8" of complainant's bill is true.

9. That it is true that the flood gates in the dam at Lake Kilby are parts of complainant's water works at Lake Kilby, but it is not true that they are necessary, or that to lower the level of the lake in order not to flood the land claimed by the defendant would seriously interfere with the operation of complainant's water works, and prevent complainant from maintaining an adequate supply of water for its inhabitants, and respondent further says that the assertion made by complainant that the land of respondent is not worth more than Twenty-five Dollars ($25.00), is silly and absurd on its face, absolutely untrue, and such statement is characteristic of complainant's position in this entire proceeding, from which there is every evidence that the idea of the complainant in bringing this suit is to defraud, if possible, your respondent of his lawful rights in and to his legally acquired property.

10. Respondent says that the said John Z. Yates has never remained inactive with reference to the flooding of his land; that the said respondent has never remained inactive with respect to the flooding of his land; that both the Portsmouth Water Company and the Portsmouth, Berkley and Suffolk Water Company, as well as the City of Portsmouth, have known at all times, the status of respondent's and the said John Z. Yates' land; that the said City of Portsmouth is in no worse position by reason of being defendant in the ejectment action mentioned after the expiration of seven years, than it would have been had the ejectment action been brought on the same day, or theretofore, it purchased the property known as Lake Kilby.

11. Respondent says that the said Joseph T. Williams is not estopped in any manner in prosecuting the said action of ejectment, and that it is not against public policy, or to the injury of anyone, that he be allowed to do so.

12. Respondent further says that every defense which the complainant may have that is worthy of consideration, may be set up in the action of ejectment now pending, and that the equities of this case disclose very forcibly that the complainant is without clean hands, and that its efforts to secure the aid of this court are being exerted in order to defraud respondent of his legally acquired property.

13. Your respondent says that the City of Portsmouth is the owner of more than ten times the amount of water works property than is necessary for supplying its inhabitants with water; that it is engaged in the supplying of water not only to its inhabitants, but as a private function for profit; the said City of Portsmouth owns Lake Cohoon in Nansemond County, Virginia, part of Lake Kilby in Nansemond County, Virginia, and water rights in Lake Drummond, to which a canal has been constructed by the said City of Portsmouth, and various and many other small sources of supply; that the said Lake Cohoon is physically connected with the pumping station at Lake Kilby, and there is an adequate supply of water in Lake Cohoon to supply not only the City of Portsmouth, but any City of three hundred thousand people; that the waters of Lake Kilby are not necessary for the use of the City of Portsmouth, and the same may be easily dispensed with, without in any way effecting any subscriber the City of Portsmouth now has, or may at any future time hope to have, for the supply of water.

14. Respondent further says that the agents of the City of Portsmouth and the Portsmouth, Berkley and Suffolk Water Company had actual knowledge at all times of the claim of John Z. Yates, and the claim of Joseph T. Williams to the land sought to be recovered in the action of ejectment; that they not only had actual notice, but constructive notice, by the records in the Clerk's Office of Nansemond County, Virginia, and not only did they disregard the rights of your respondent and the said John Z. Yates, but the rights

and property of every other person, including private property used for burial of the dead; that no attempt has been made by the City of Portsmouth or by the Portsmouth, Berkley and Suffolk Water Company to acquire in a legal manner, any property which it saw fit to use, except where demands of injured parties have forced legal acquisition; that it has disregarded the rights of not only your respondent, but the said John Z. Yates, and the public in general, and this suit has been brought for the purpose of restraining your respondent from recovering that which he is legally entitled, or a reasonable compensation therefor.

15. Your respondent further says that the raising of a dam by the Portsmouth, Berkley and Suffolk Water Company, and the maintenance thereof by the City of Portsmouth, are both unlawful; that no rights have been acquired thereby, by the City of Portsmouth or the Portsmouth, Berkley and Suffolk Water Company, for the reason that neither the City of Portsmouth nor its predecessors in title have ever complied with the laws of the State of Virginia, requiring petition to be filed in the Circuit Court of the County wherein any dam is located, which is to be raised, or proposed to be erected; that proper notice thereof be given to the public and contiguous land owners; that proper appraisal be made of the damages to be done, and order of court granting authority therefor obtained before erection or raising of the dam, and in many other particulars disclosed by the Statute, and neither the City of Portsmouth nor its predecessors in title have obtained nor could they gain any rights in and to the property of your respondent or to any other property flooded by the waters of Lake Kilby, unless and until the said Statute is complied with, or the complainant acquire the said property by purchase or condemnation; that the said complainant is estopped to claim the right of the use of the property of respondent or any other person, unless and until it complies with the aforesaid Statute, and each and every provision thereof, and is likewise estopped to assert estoppel against respondent.

16. Your respondent further says that it is not against public policy to maintain his action of ejectment; that the City of Portsmouth has ample means and adequate authority to acquire the property of your respondent for a fair compensation, by purchase or by condemnation, after it has complied with the foregoing Statute, and that it will not be hurt, should the action of ejectment be maintained, for the good reason that should your respondent recover on his legal right, the authorities are of one accord that then and in that event the City of Portsmouth could, by proper action, ask for stay of execution of a judgment in the ejectment proceeding rendered until such reasonable time as the City of Portsmouth might desire to either acquire respondent's property by purchase, or by proper action of condemnation.
And your respondent further says that it is more in line with public policy that the security of private property be maintained, than that a private operation of a municipal corporation should be allowed to take the property of your respondent or any other person, without due process of law, and in violation of the laws of the State of Virginia, and the United States Constitution.

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

Joseph D. Williams
By Counsel.

Holland & Woodward
Counsel.

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

CITY OF PORTSMOUTH

v.

J. T. WILLIAMS

ANSWER OF J. T. WILLIAMS

1929 Dec. 11. Filed.
J.L.M.

HOLLAND & WOODWARD

ATTORNEYS AND COUNSELLORS AT LAW

SUITE 301-307 NATIONAL BANK OF SUFFOLK BUILDING

SUFFOLK, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

To the Honorable James L. McLemore, Judge of said Court:

Your complainant City of Portsmouth, a municipal corporation, complains and says:

1. That it is a municipal corporation organized and existing under the laws of the State of Virginia and has power to acquire or otherwise obtain control of or establish, maintain, operate, extend and enlarge water works within or without the limits of said City, and has power to acquire within or without the limits of the said City by purchase, condemnation or otherwise, whatever land may be necessary for acquiring, locating, establishing, maintaining, operating, extending or enlarging said water works for supplying its inhabitants with water.

2. That by deed dated the 30th day of December, 1918, admitted to record in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, the 21st day of June, 1919, and recorded in said office in Deed Book No. 90, page 504, the Portsmouth, Berkley and Suffolk Water Company conveyed unto your complainant all water works system and plant of the said Portsmouth, Berkley and Suffolk Water Company situate in and near the Cities of Portsmouth and Suffolk, in the Counties of Norfolk, Nansemond and Isle of Wight, and in and near the former Town of Berkley (now a part of the City of Norfolk), County of Norfolk, in the State of Virginia, which said conveyance included what is known as Lake Kilby in Nansemond County, and your complainant has ever since owned, maintained and operated Lake Kilby as a part of its water works for supplying its inhabitants with water.

3. That Lake Kilby was formerly known as Kilby's Mill Pond, and, while so known, was, by deed dated the 13th

day of August, 1884, admitted to record in the Clerk's Office of Nansemond County Court, the 25th day of September, 1884, and recorded in said office in Deed Book No. 13, page 521, conveyed by Wallace Kilby and Maggie T. Kilby, his wife, to the Portsmouth Water Company, a predecessor in title of the Portsmouth, Berkley and Suffolk Water Company; that the Portsmouth Water Company developed Kilby's Mill Pond into a part of its water works system and named it Lake Kilby; that, after the said development and until the Portsmouth, Berkley and Suffolk Water Company conveyed Lake Kilby to your complainant, the Portsmouth Water Company or its successor in title, the Portsmouth and Suffolk Water Company, which latter corporation, by an act of the Legislature approved January 16, 1902, was consolidated with other corporations so as to form one corporation by the name of Portsmouth, Berkley and Suffolk Water Company, maintained and operated Lake Kilby as a necessary part of the water works for supplying the inhabitants of the City of Portsmouth with water. That the Portsmouth Water Company, the Portsmouth and Suffolk Water Company and the Portsmouth, Berkley and Suffolk Water Company were all public service corporations chartered and organized under the laws of the State of Virginia.

4. That the top of the flood gates in the dam at Lake Kilby fixing the maximum elevation of the water in said lake was, it is believed, at the same level at the time of the instituting of the action of ejectment hereinafter set forth, as the top of the flood gates in the said dam when Lake Kilby was known as Kilby's Mill Pond.

5. That for many years, while Lake Kilby was known as Kilby's Mill Pond and also while it was known as Lake Kilby, John Z. Yates owned a tract or parcel of land bounded on the

East by high water mark of said pond, which land, by deed dated the 8th day of December, 1917, admitted to record in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, the 11th day of December, 1917, and recorded in said office in Deed Book No. 86, page 603, the said John Z. Yates and Mary A. Yates, his wife, conveyed to Joseph T. Williams, the defendant; a copy of which deed is hereto attached, marked "Exhibit A", and made a part of this bill.

6. That, more than forty (40) years ago, when the said Kilby's Mill Pond was first being developed by the Portsmouth Water Company as a necessary part of the water works system for supplying the inhabitants of the City of Portsmouth with water, the said John Z. Yates had knowledge of the development and the rebuilding of the flood gates in the dam and remained inactive and permitted the Portsmouth Water Company to expend large sums of money in constructing and completing the said flood gates and other works, and that later, when the gates in the dam at Lake Kilby were rebuilt by the Portsmouth, Berkley and Suffolk Water Company and put in the condition in which they have ever since been maintained, and the top of these new flood gates made the same elevation as the top of the flood gates that they replaced, the said John Z. Yates had knowledge of the rebuilding of the said gates, knew that the land for which the defendant, Joseph T. Williams, has brought the action of ejectment hereinafter set forth was covered with water and remained inactive and permitted the Portsmouth, Berkley and Suffolk Water Company to expend large sums of money in constructing and completing the said new gates and in making other improvements.

7. That no change has been made in the elevation of the top of the gates in the dam at Lake Kilby or in the maximum elevation of the water in Lake Kilby since the said deed, dated the 11th day of December, 1917, from John Z. Yates and wife to Joseph T. Williams, and the said defendant, Joseph T. Williams, had full and complete knowledge of the physical conditions existing at the time he took the said conveyance from the said John Z. Yates. And, although he then knew that the land for which he has brought the action of ejectment hereinafter set forth was covered by the waters of Lake Kilby, the said defendant, Joseph T. Williams, stood by and allowed your complainant, City of Portsmouth, to purchase for valuable consideration from the Portsmouth, Berkley and Suffolk Water Company, by the deed dated the 30th day of December, 1918, referred to in paragraph 2 of this bill, the property therein described including what is known as Lake Kilby.

8. That on the day of July, 1926, more than seven (7) years after the said conveyance by the Portsmouth, Berkley and Suffolk Water Company to your complainant of Lake Kilby, the defendant, Joseph T. Williams, filed in the Clerk's Office of the Circuit Court of Nansemond County a declaration in ejectment which is still pending against your complainant, a copy of which declaration as amended by the said Joseph T. Williams is hereunto annexed, marked "Exhibit B", and made a part of this bill, the land claimed in said declaration being that part under the waters of Lake Kilby of the land conveyed to the said Joseph T. Williams by John Z. Yates and wife by the deed shown as "Exhibit A" attached hereto.

9. That the flood gates in the dam at Lake Kilby are necessary and component parts of your complainant's water works, and that to lower the level of the flood gates in order not to

flood the land claimed by the defendant would seriously interfere with the operation of your complainant's water works and prevent your complainant from maintaining at all times an adequate supply of water for its inhabitants. That the value of the land claimed by the defendant at the time your complainant's predecessor in title the Portsmouth Water Company constructed the flood gates in the dam at Lake Kilby and made other improvements did not exceed the sum of $25.00.

10. That the said John Z. Yates, by remaining inactive and permitting the Portsmouth Water Company to expend large sums of money in first constructing and completing the flood gates and other works, and by later remaining inactive and permitting the Portsmouth, Berkley and Suffolk Water Company to expend large sums of money in rebuilding the said gates and making other improvements, was estopped from prosecuting against your complainant the City of Portsmouth any action of ejectment on account of flooding lands, even if any of the land of John Z. Yates was flooded and if ejectment can be brought for flooding land, both of which your complainant denies. And the said Joseph T. Williams, being the grantee of the said John Z. Yates, is also likewise estopped from prosecuting his action of ejectment now pending in the Circuit Court of Nansemond County, Virginia, for land claimed by him flooded by the waters of Lake Kilby; and the said Joseph T. Williams is estopped from prosecuting the said action of ejectment for the further reasons that he had full knowledge and information that the land now claimed to be owned by him was flooded by the waters of Lake Kilby at the time he took the deed "Exhibit A" from John Z. Yates and wife and stood by and allowed your complainant to purchase for valuable consideration Lake Kilby from the Portsmouth, Berkley and Suffolk Water Company and brought his action of

ejectment more than seven (7) years thereafter.

11. That not only is the said Joseph T. Williams estopped from prosecuting his said action of ejectment, but, under the circumstances of this case, it is against public policy that he be allowed to do so.

12. That the above equitable defenses herein set forth cannot be pleaded or otherwise taken advantage of by your complainant in the action of ejectment now pending.

In tender consideration whereof, your complainant prays that the said Joseph T. Williams may be made a party defendant to this bill, and required to answer the same, but not on oath, the oath being expressly waived; that the said defendamt, his agents, attorneys, and all others, be enjoined and restrained from further proceeding in the said action of ejectment now pending in the Circuit Court of Nansemond County, Virginia, brought by the said Joseph T. Williams against your complainant; that proper process issue, and all proper orders be made; and that all such other, further and general relief may be afforded your complainant as the nature of its case may require, or to equity shall seem meet. And your complainant will ever pray.

CITY OF PORTSMOUTH,

By Vernon A. Smith
Mayor.

Attest:

L. G Barrow
City Clerk.

R C Barclay City Attorney.

James H Corbitt Attorney.

STATE OF VIRGINIA,

CITY OF PORTSMOUTH, To-wit:

This day personally appeared before me, the undersigned, Caroline Gort, a Notary Public of the City of Portsmouth, Vernon A. Brooks, Mayor of the City of Portsmouth, and made oath that the allegations contained in the foregoing bill are true.

Given under my hand this 29 day of March, 1929.

My commission expires Feb. 14, 1930.

Caroline Gort
Notary Public.

THIS DEED, Made this 8th of Dec., 1917, betweene J. Z. Yates and Mary A. Yates, his wife, of the city of Suffolk and State of Virginia, of the first part, and Joseph T. Williams, of the county of Nansemond and State of Virginia, of the second part.

WITNESSETH: That for and in consideration of ONE DOLLAR and other valuable considerations, the said parties of the first part do grant with GENERAL WARRANTY unto the said party of the second part, all that certain tract of land in Holy Neck Magisterial District, of Nansemond County, Virginia, near the village or station known as "Kilby", and on the South side of the county road leading to Holland, bounded and described as follows:

Commencing at a point on the South side of said county road at a point Three Hundred and thirteen (313) feet Easterly from the East side of the "Turlington Road", and running thence in a Southerly direction in a straight line along the East side of I. O. Hill's land and that of W. H. Yates, recently conveyed to them by the said parties of the first part, South 22° 15' East Thirty-three hundred and thirty-four feet to a point in C. J. Duke's line, thence North 65° Twelve hundred and sixty-one feet to a stake, thence South 40° 15' East Twenty-three hundred and forty-nine feet to Lake Kilby, thence following the line of said Lake Kilby in its various meanaderings to the intersection of a branch, all of which is designated on a certain plat of the property herein conveyed, and duly filed in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Plat Book No. 1, page 159, thence up said branch in a Northwesterly direction along said branch, the center thereof in its various meanderings to a stake in the head of said branch on the South side of said county Road leading to Holland, thence along the South side of said last named road South 46° 805 feet to the point of beginning, and containing by survey, Two hundred and

EXHIBIT A

twenty-two and seventy-one one hundredth (222 71/100) acres. Being bounded on the North by said county road, East by said branch and Lake Milby, South by said Lake Milby and the submerged land hereinafter maentined and that of C. J. Duke, and West by said Hill and Yates land.

SECOND: All that submerged land on the South as designated on said plat, now under waters of Lake Milby and containing by estimation Eleven (11) acres. The land herein conveyed being all of those certain tracts of land conveyed to the said J. Z. Yates by deed as follows:

From J. H. Gesner and John H. Wright, Special Commissioner, dated the 25th of Oct., 1879, and duly of record in said Clerk's Office in D. B. No. 7, page 226. From Chas. C. Duke and wife, bearing date the 1st of March, 1882, and duly of record in said Clerk's Office in D. B. No. 10, page 261. Save and except the two tracts conveyed to I. O. Hill and W. H. Yates, Eighty-three and one-half acres by survey, which is designated on said plat.

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

The said parties of the first part 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 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. Z. Yates (SEAL)

Mary A. Yates (SEAL)

State of Virginia,

City of Suffolk, to-wit:

I, J. Walter Hosier, a Notary Public in and for the city of Suffolk, in the state of Virginia, do certify that J. Z. Yates and Mary A. Yates, his wife, whose names are signed to the writing above, bearing date the 8th of Dec., 1917, have duly acknowledged the same before me in my city aforesaid.

And I further certify that my commission as Notary Public expires on the 6th of Jan., 1918.

J. Walter Hosier
Notary Public.

VIRGINIA:-

In the Clerk's Office of the Circuit Court of Nansemond County the 11th day of December, 1917. This deed was presented, and, with the certificate annexed, admitted to record, the requisite amount of $14.00 in Revenue stamps affixed and cancelled.

Teste:

G. E. Bunting, Clerk

By Ruby V. Benton, D. C.

VIRGINIA,

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

J. T. Williams

v.

City of Portsmouth, a Municipal Corporation, Portsmouth, Berkley and Suffolk Water Co., A Corporation, and Portsmouth Suburban Water Co.

J. T. Williams complains of the City of Portsmouth, a municipal corporation, Portsmouth, Berkley and Suffolk Water Co., a corporation and Portsmouth Suburban Water Co., a corporation, defendants, of a plea of trespass; for this, to-wit: that heretofore, to-wit, on the 9th day of December, 1917, the said plaintiff was possessed in fee-simple, of a certain tract or parcel of land called the Yates property, lying and being in the said County of Nansemond, containing Two Hundred Thirty-three and Seventy-one One Hundredths (233.71) acres of land, and bounded as follows:

"Commencing at a point on the South side of said County Road at a point Three Hundred and Thirteen (313) feet, Easterly from the East side of the "Turlington Road" and running thence in a Southerly direction in a straight line along the East side of I. O. Hill's land and that of W. H. Yates, recently conveyed to them by the said parties of the first part; South Twenty-two (22) degrees, Fifteen (15) inches, East Three Thousand Three Hundred Thirty-four (3334) feet, to a point in C. J. Duke's line; thence North Sixty-five (65) degrees, One Thousand Two Hundred and Sixty-one (1261) feet to a stake; thence South Forty (40) degrees, Fifteen (15) inches, East Two Thousand Three Hundred Forty-nine (2349) feet to Lake Kilby; thence following the line of Lake Kilby in its various meanderings to the intersection of a branch, all of which is designated on a certain plat of the property herein conveyed and duly recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Plat Book No. 1 Page 159; thence up said branch in a Northwesterly direction along said branch, the center thereof in its various meanderings to a stake in the head of said branch on the South side of said County Road leading to Holland (from Suffolk); thence along the South side of said last named Road, South Forty-six (46) degrees, Eight Hundred and Five (805) feet, to the point of beginning and containing by survey Two Hundred Twenty-two and Seventy-one One Hundredths (222.71) acres. Being bounded on the North by said County Road, East by said branch and Lake Kilby, South by Lake Kilby and the submerged land hereinafter mentioned and that of C. J. Duke and West by said Hill and Yates Land.

Second. All that submerged land on the South as designated on said plat now under waters of Lake Kilby and containing by estimation Eleven (11) acres. The land herein

EXHIBIT B

conveyed being all of those certain tracts of land conveyed to the said J. Z. Yates, al follows:

From J. H. Gesner and John H. Wright, Special Commissioner, dated the 25th day of October, 1879 and duly of record in said Clerk's Office in Deed Book No. 7 Page 626. From Chas. J. Duke and wife bearing date the 1st day of March, 1882, and duly of record in said Clerk's Office in Deed Book No. 10 Page 261. Save and except two (2) tracts conveyed to I. O. Hill and W. H. Yates, Eighty-three and One Half (83½) acres by survey, which is designated on said plat."

and the said plaintiff says, that he, being so possessed of the said tract or parcel of land, the said defendants afterwards, to-wit, on the 10th day of December, 1917, entered into the same, and that they unlawfully withhold from the said plaintiff the possession of a part thereof, entitled area under water 18.74 A, as shown by a certain map thereof filed herewith to the damage of the said plaintiff of Twenty-five Hundred ($2500.00) Dollars. And therefore he institutes this action of ejectment.

J. T. Williams

Thos. L. Woodward p.q.

To City of Portsmouth, a Municipal corporation, Portsmouth, Berkley and Suffolk Water Co., a corporation and Portsmouth Suburban Water Co.

You are hereby notified, that the foregoing declaration in ejectment against you will be filed in the Clerk's Office of the Circuit Court of Nansemond County, on the first day of 2nd July Rules held for the said court on the 3rd Monday in July, 1926, and that rents and profits and damages will also be claimed of you as per account thereof annexed to this declaration.

Thos. L. Woodward p.q.

City of Portsmouth, a Municipal corporation,

Portsmouth, Berkley and Suffolk Water Company,

and Portsmouth Suburban Water Company.

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| | |
|---|---|
| To damages occasioned by your trespasses | $1500.00 |
| To rents and profits due me for use and occupancy on my land on divers and sundry occasions | 1000.00 |

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

CITY OF PORTSMOUTH

V.

JOSEPH T. WILLIAMS.

B I L L

Filed 4/2/29
Paul J. Powell Clerk

LAW OFFICES OF
JAMES H. CORBITT
SUFFOLK, VIRGINIA

In U. Court of C. C.

City of Portsmouth,
a municipal corporation

vs

Judd & Williams

BUSHNELL'S
"PAPEROID"
(TRADE-MARK)
Expanding Wallets

WEAR LIKE LEATHER
MADE IN ALL SIZES

ALVAH BUSHNELL CO.
PHILADELPHIA, PA.

This is size 4 x 9½ Inches
1¾ Inch Expansion
Patented August 10, 1909