

Book
E
Williams
Recd.

Virginia. At a Circuit Superior Court of law and chancery for the County of Elizabeth City certified and held at the Court house there on Tuesday the 7th day of October 1833.
Be it remembered that on the 2 day of December 1833 Mordecai Cooke and out of the clerk's office of the said Court a Subpoena to answer against Edward Williams and Jane M. his wife which follows in this word —

The Commonwealth of Virginia
To the Sheriff of Elizabeth City County Greeting

Subp^a

You are hereby commanded to summon Edward Williams and Jane M. his wife to appear at the clerk's office of the Circuit Superior Court of Law and Chancery for Elizabeth City County, on the first Monday in January next, being the rule day of said Court, to answer a bill or bills against them in the said Court by Mordecai Cooke and unless the said defendants shall answer the said bill within four months thereafter, the Court will take the same for confessed, and decree accordingly. And this they shall in no wise omit, under the penalty of \$300 000. And have them then this writ: Witness Myself J. Annister, clerk of our said Court, this second day of December 1833 in the 58th year of the Commonwealth.

Witnessed at
J. Annister

Upon this writ the Sheriff made the following return

Executed

John Tatt Sheriff

Bill

To the Honorable Abel P. Upshur Judge of the Circuit Superior Court of Law and Chancery for the County of Elizabeth City, Humbly complaining sheweth to your Honor your Orator Mordecai Cooke that Jane M. King being the proprietor in fee simple of eight lots of land in Gosport a part of the Town of Portsmouth in this State, on the 21st day of October in the year one thousand eight hundred and thirty, sold the same to your Orator for the sum of six hundred dollars. The following are the circumstances attending this contract. Being a resident of Elizabeth City County she came down to Portsmouth and called upon Capt. Arthur Emerson the surveyor of Norfolk County who had acted as her agent in the sale of two other lots in Portsmouth and requested him to go with her to view the Gosport lots owned by her, which he did. She then offered them for sale to him at the price of six hundred dollars, he informed her he did not wish to purchase, but if he did, he would not give her more than four hundred dollars for them which he considered the full price. She then requested that he would endeavor to procure a purchaser for them at the price of six hundred dollars, and at her request the note filed herewith as a part of this bill was written and attested by the said Emerson as her agent to your Orator. Immediately upon receiving that note your Orator waited upon the said Emerson who accompanied him to the house where Miss King was and a bargain and sale were soon concluded between your Orator and her for the said lots at the price of six hundred dollars, and in her presence, the words and figures "Price \$600 for 8 Lots square" were added to the said note by your Orator. She then requested the said Emerson as her agent to prepare a deed and observed that as she was anxious to return to Hampton in the boat of that day, it would not be in her power to stay and

execute

the deed but would not return on the Thursday following and so. She did was accordingly prepared and is the same that is filed herewith as a part of this Bill by the said Commissioner and the money paid by your Orator to him as such, but she failed to execute the same, and afterwards totally refused to do so. She has since intermarried with Edward Williams, and they both now refuse to make a conveyance to your Orator of the Lots aforesaid, as in honour and equity they ought to do —

In tender consideration whereof and forasmuch as your Orator is without relief save in a Court of Equity, where matters of this kind are cognizable, they pray that the said Edward Williams and Jane M. his wife may be made parties defendants to this bill and may answer all and singular its allegations, as particularly as if here specially interrogated to each of them, that they may be decreed to execute a conveyance to your Orator for the said eight Lots of Land (which are specifically described in the deed drawn by Commissioner as aforesaid) and that such other and further relief may be had as consists with Equity. May it please the Court to issue the cometh writ of Subpoena —

Chandler /s/

Col. M. Locke

Dr Sir

Miss Jane King of Hampton at Mr. Sonas opposite Capt Reynolds is desirous of selling some Goddard Lots she wishes to return to Hampton if you are inclined to purchase a bargain will call and see her immediately after breakfast— Price \$600 for 8 Lots square

Yrs respectfully

Arthur Commissioner

Oct 21st 1831

This Indenture made this twenty first day October one thousand eight hundred and thirty between Jane M. King of the one part and Mordecai Locke of the other part witnesseth that for and in consideration of six hundred dollars to her in hand paid the receipt whereof is hereby acknowledged she the said Jane M. King hath bargained sold and transferred and by these presents doth bargain sell and transfer unto the said Mordecai Locke his heirs Executors and assigns all those Lots of Land situate in that part of Portsmouth called Gosport which are bounded by South Street on the East, Pinckney Street on the South, by Fifth Street on the West and by Hanger Street on the North which Lots were conveyed by William Berkeley Governor of Virginia to Anthony Martin, as by deed recorded in Norfolk County in 1799 will appear which again contains the Lots numbered 237 to 244 inclusive this land descended from said Anthony Martin to his Daughter Margaret who was the mother of the said Jane M. King her sole heir. To have and to hold the said eight Lots of Land together with all their privileges and appurtenances unto him the said Mordecai Locke his heirs Executors and assigns for ever, and the said Jane M. King for herself and her heirs doth hereby covenant to and with the said Mordecai Locke and his heirs that he may quietly enter upon and occupy the said eight Lots and all their appurtenances forever free from the claim a claim and of herself and her

Exhibit

Exhibit

here and of all and every other person or persons whomsoever — In testimony whereof the said Lane M. King hath hereunto set her hand and Seal this date first above written

Signed Sealed and delivered
in presence of —



Answer of William
The answer of Edward Williams to a bill of complaint exhibited against him and Lane M. his wife in the Circuit Superior Court of Law and Chancery for the County of Elizabeth City by Mordecai Locke —

This Respondent in answer to the material allegations of said bill says that he knows nothing of the facts and circumstances therein disclosed and set forth except so far as they have been derived from his wife Lane M. to whose answer filed in this suit he begs leave to refer —

Having answered all the material allegations of the complaint under bill this Respondent prays hence to be dismissed with his costs attending his defence in this behalf

Edward Williams

Elizabeth City County
To wit: Edward Williams whose name is subscribed to the foregoing answer this day personally appeared before me a Justice of the peace of and for said County, in said County, and being first duly sworn on the Holy Bible made oath, that the statements made in said Answer are true — Given under my hand this 23 day of April in the year 1834

P. G. Bauke J.P.

Answer of Lane Williams
The separate answer of Lane M. Williams wife of Edward Williams parties defendants to a bill of complaint exhibited against them in the Circuit Superior Court of Law and Chancery for Elizabeth City County by Mordecai Locke —

This Respondent in answer to the material allegations in said bill says that the charges therein set forth are not only untrue, but destitute of the slightest foundation: She admits that she is entitled to a fee simple estate in eight lots lying in Gosport as in said bill is alleged, but she denies in the most positive and unequivocal manner that she ever, either in person or by any authorized agent sold the same, or any part thereof, either to the complainant or to any other person —

The history of the transaction is briefly this: sometime in the fall of 1830, this Respondent received from Mr. Emmerson a message stating that he wished to purchase the said lots, and that he hoped that this Respondent would give him the refusal of them, when disposed to sell: Sometime afterwards when passing thro' Portsmouth, on her return from Suffolk this Respondent called on Mr. Emmerson, who offered her for said lots the sum of \$400. She felt some astonishment at such a proposition, because she had been offered \$200. for one of said lots, and she informed him she would not sell at that price, on that account, and especially as she wished to dispose of only one of them: Mr. Emmerson stated that he thought of

This respondent sold only one, that she would not be able to find a purchaser for the others - he observed that they (the respondent understanding him to mean the Government) were finding fault with the public works, and that some people believed that they would not long be kept up, and if such should be the case, he would not give this respondent \$5 for either of said Lots. This respondent also denies that she ever offered them to him for \$100 - or any other sum, or ever authorized him to find a purchaser for them at that or any other price - He informed her that he could have them advertised if the respondent wished it, and she replied if she should determine on selling, she would write him word to that effect. At this time she was standing in the door of a Mr. Jones and looked to a gentleman in the street telling him to make haste and come on: a gentleman rode up, who this respondent understood to be Mr. M. Cooke the complainant. Emmerson inquired if he wished to purchase land - the complainant replied he did not know, but asked the price - Emmerson said \$750: Cooke replied no I do not wish to buy, Emmerson then asked if he would be willing to give \$100: Cooke said yes - Emmerson then remarked he could do nothing at that time, that this respondent must come over some other time, and asked if she would do so next Sunday. This Respondent said she did not know - This Respondent never imagined that from a conversation of this character she could be compelled to give a right either to Cooke or Emmerson for her Lots, If any note or memorandum was prepared by Emmerson for Cooke or between them she knows nothing of it, and the note filed with the bill, she solemnly avers she never saw, till it was filed in this suit: it was never offered to her, signed by her or approved of in any shape or form whatsoever by her, nor did she directly or indirectly ever give any person any authority to sign the same for her, or any paper of a similar character - Having answered all the material allegations of said bill she prays that the same may be dismissed at the costs of the complainant.

Jane M. Williams

At a Circuit Superior Court of law and chancery for the County of Elizabeth City continued and held at the Court house thereof on Tuesday the 7th of October 1834 -

Mordecai Brooks

Plt

vs
Edward Williams & Jane M. his wife Def

Admorsion
7th Dec

This cause came on this day to be heard on the bill answers and exhibits and was argued by counsel, on consideration whereof the Court doth adjudge order and decree that the bill be dismissed and that the Respondents recover against the Plt their costs by them in this behalf expended -

a copy Verdict

Wm. M. Williams clk

Virginia At a Court Superior Court of law and chancery for the County of
Elizabeth City continued and held at the Court house thereof the 28th
day of April 1833

Cook Comr
1st
as
Butt
and

Be it remembered that on the third day of March 1830 Mordecai Cooke comr
of Josiah Butt decd. and of Lemuel B. Butt and of Nancy Butt decd. Henry Moore
and Sarah his wife late Sarah Butt, Arthur D. Butt Jnr. A. Butt Thomas
Grispolin Wm. Williams and Elizabeth his wife the said Williams as husband
and admr of Mary Tooley, Wilson Hall and Maria his wife, Stephen Williams
Mord. Cooke Shiff of Norfolk County & comr of Sarah Davis, Geo. F. Martin
and Oliver his wife (which said Oliver Martin, Sarah Davis, Mary Williams
Elizabeth Williams and Tho. B. Grispolin were the children of Oliver Grispolin
formerly Oliver Butt paternal Aunt of Dorey Butt) Thomas Shepherd admr
of Jordan Marchant, Aceline Marchant, William F. Gardner and Fanny
his wife Dorey G. Farraguth and Susan his wife, Jordan Marchant and Jane
Marchant infants suing by D^r G. Farraguth their next friend Abigail Butt
widow and Jnr. R. Butt, Virginia, Helen and Flavin Butt infants children
of D^r Butt suing by the said Abigail, Mord. Cooke admr of Oliver Har-
tigan formerly Oliver Butt, and of Nathl Butt and of Prudence Tooley
John Humphreys and Sarah his wife, Catharine Miller, John Shipp admr
of Jas. Tooley, Thomas Tooley, Dorey Tooley, and Josiah Tooley (which
Sarah, Catharine, James, Thomas, Dorey and Josiah Tooley were the
children and heirs of Prudence Butt decd.) and Mord. Cooke comr of
Sarah Murden, Elyse Murden, Wm. Murden and Josiah Murden Rich.
Corbett and Mary his wife and Joseph Lockhart and Sarah his wife sued
out of the clerks Office of the Superior Court of chancery directed to be
holden in the City of Williamsburg a Subpoena to answer, against
Maximilian B. Butt and Charles Lee and Frances his wife, which follows
in these words

The commonwealth of Virginia

Subpe

To the Marshal of the Superior Court of Chancery for the District
Springing - You are hereby commanded to summon Maximilian B. Butt
and Charles Lee and Frances his wife to appear at the former Hospital in the
City of Williamsburg, at the clerks Office of the Superior Court of chancery,
directed to be holden in the said City, on the first Monday in April next
to answer a bill exhibited against them in the said Court by Mordecai Cooke
comr of Josiah Butt and Lemuel B. Butt and Nancy Butt of Sarah Davis
and Oliver Butt, afterwards Artisan of Nathaniel Butt of Prudence Tooley of
Sarah Murden, William Murden and Josiah Murden, John M. Butt,
Henry Moore and Sarah his wife Arthur D. Butt Thomas Grispolin William
Williams and Elizabeth his wife, and as admr of Mary Tooley, Wilson Hall &
Maria his wife Stephen Williams others And unless the said Defendants
shall answer the said bill within four months thereafter, the Court will take
the same for confessed and decree accordingly. And this they shall in no wise

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brink under the penalty of 1000l. And have then there this with Witnefs, Edm-
and Christian, clerk of our said Court, at Williamsburg, this 3^d day of
March 1830, and in the year of the commonwealth

Ed Christian ~~clerk~~

(The Marshalls is requested to note, in his return, the time of executing this process.
One copy, to be served on each defendant.)

On which writ was the following endorsement

“Norfolk County to wit

This day John Hodges (Deputy for Mord. Cooke Jy of
Norfolk County) personally appears before me a Justice of the peace for the
County aforesaid, and made oath that on the 2^d of March last he delivered a
true copy of the within to Charles L. Ree, another to Frances Ree and another
to Max. B. Butt. As Witnefs my hand this 12th of April 1830, -

J. Webb J.P.

Bill

To the Honorable ^{judge} of the Superior Court of Chancery directed by Law
to be holden in the former Capitol in the City of Williamsburg -
Humbly complaining shew unto your Honors your Orators Mordcai
Cooke comitee of Josiah Butt and of Lemuel B. Butt, John N. Butt He-
ory (Moore and Sarah his wife late Sarah Butt, and Arthur R. Butt Mor-
decai Cooke Sheriff of Norfolk County and comitee of Nancy Butt (wh-
ich Lemuel, John, Sarah, Nancy and Arthur, together with with Frances
the wife of Charles L. Ree and Maximilian B. Butt are the children and
heirs at law of Nathaniel Butt paternal uncle of Lovey Butt to be here-
after mentioned) Thomas Grispolm William Williams and Elizabeth his
wife the said William Williams as husband and admr of Mary Tooley -
Wilson Hall and Maria his wife, Stephen Williams, Mordcai Cooke
Sheriff of Norfolk County and comitee of Sarah Davis, George T.
McMartin and Olivia his wife (which said Olivia Martin, Sarah Davis,
Mary Williams, Elizabeth Williams and Thomas B. Grispolm were the
children of Olivia Grispolm formerly Olivia Butt paternal aunt of
Lovey Butt) Thomas Shepherd admr of Jordan Marchant, Adeline
Marchant, William F. Gardner and Fanny his wife David G. Farrag-
uth and Susan his wife Jordan Marchant and Sam Marchant infants
suing by David G. Farraguth their next friend Abigail Butt widow, and
John R. Butt, Virginia, Helen & Flavius Butt infant children of Rem-
Butt suing by said Abigail. Mordcai Cooke admr of Olivia Harlizon
formerly Olivia Butt and of Nathaniel Butt and of Prudence Tooley, Jm
Humphreys and Sarah his wife Catharine Miller, John Shippe admr
of James Tooley, Thomas Tooley, Doory Tooley, and Josiah Tooley (wh-
ich Sarah, Catharine, James, Thomas, Doory and Josiah Tooley were
the children and heirs of Prudence Butt and each of them as survived
James Tooley are his heirs) Mordcai Cooke comitee of Sarah Murdin

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Elizabeth Murden, William Murden and Josiah Murden, Richard Corbitt
and Mary his wife, Jos Roakhorst and Sarah his wife -
That Josiah Butts of the County of Norfolk departed this life between the 11th
of February and the 21st of April 1800 leaving issue one child only to wit:
Fanny Butts and no widow. Before his death he duly executed his last will
and testament in writing which was proved after his death, and an Office
Copy thereof and of its Probate is filed herewith as part of this bill -
By that will he devised all his Estate real and personal after paying his
debts to the said Fanny, with several limitations over in these words
to wit: "Provides my said daughter should die without lawfull issue
or heir that Maximilian Butts should have the plantation he now lives
on, to him and his heirs forever." Also it is his will and desire that pro-
vided his before mentioned daughter should die without heir that the
said Maximilian Butts, should have and give to him my boys Henry
Martin, Matthew, Sam and Negro girl Peggy to him and his heirs fore-
ever" And provided my daughter should die without heir, it is my will
that all the balance of my Estate real and personal should be equally
divided among all my brothers and sisters children to them and their
heirs forever - The said Fanny died a minor within a year after her
father's death, on or about the day of in the year 1801 -
Doubts have arisen on the said limitations of the will, and how the Estate
disposed of by the testator's said devise should pass, which doubts are now
stated to the Court - First, if the limitations, or any of them of the
real Estate are valid, or too remote and therefore void; and if so void
whether the said Fanny took a fee either as heir or devisee. In that event
of Fanny taking a fee your Orators are advised that the whole Estate
real, acquired by the said Fanny either as heir or devisee of her said father
under the law then in force passed and descended to her heirs on the part
of her father - The said Fanny had never been married, and left no issue,
neither brother nor sister nor their descendants, no grandfather nor grand-
mother, but had living one paternal Uncle Nathaniel Butts, and
two paternal Aunts to wit: Olivia and Prudence, and several cousins,
to wit: Elizabeth, William, Josiah, Sarah, Mary Murden, children of
a deceased paternal Aunt Sarah Murden - So that the Estate was
divisible into 4 parts, one fourth each to Nathaniel Butts, Olivia and
Prudence, and the other 4th equal to be divided between Elizabeth, William
Josiah, Sarah and Mary Murden children and heirs of Sarah Murden -
Nathaniel Butts afterwards died leaving issue, and for heirs at Law
Samuel B. Butts Maximilian B Butts, John N. Butts Arthur B. Butts Mary
Butts and Sarah now wife of Henry Moore, and Frances wife of Charles
C. Lee, so that his fourth on that construction was liable to be divided
equally among them, that is one sixth each - Samuel died in 1829 with

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leaving a widow your sister Abigail and children, your brothers John R. Virginia, Helen and Flavius Butts, Nancy died intestate without issue before Samuel, her brothers and sisters being her heirs, her estate has been committed to your brother Mordecai Cooke Sheriff of Norfolk County - Olivia has 4 husbands Tooley Woodward

Grispolm and William Hartigan the last of whom survived her - By these husbands she had issue, Sarah and Mary Tooley, both dead without issue and intestate. Olivia Woodward wife of your complainant George J. Martin and Elizabeth now wife of your complainant William Williams, by Grispolm she had your brother Thomas R. Grispolm. Administration on the Estate of Sarah has been committed to your brother Mordecai Cooke and on Mary to your brother William Williams, Mary has issue your brother Stephen Williams and Maria now wife of your brother Wilson Hall. Your brother Thomas conveyed his share to Jordan Marchant, who is also dead leaving as his heirs your sister Adeline, Fanny wife of your brother William H. Gardner, Susan wife of your brother David G. Farragut. Your brother Jordan Marchant and Jane Marchant both minors - Your brother Thomas Shepherd had administered on the Estate of the said Jordan Marchant - Prudence the Aunt married Tooley afterwards died leaving issue, her heirs and distributees, Sarah, Catharine, Josiah Thomas, George and James, so that her fourth became liable to divided into six parts - Mordecai Cooke Sheriff of Norfolk County, for want of administration, has been appointed committee of her Estate. James is dead intestate, and without issue, his brothers and sisters are his heirs, and Seth Shepherd his admr. - The children of Sarah Murden entitled to her fourth by right of representation were as before mentioned Elizabeth, William, Josiah, Sarah wife of Jos. Lockhart and Mary wife of Richard Corbell. Josiah William and Elizabeth have died without issue leaving as heirs their brother and sisters, and the said Sarah Lockhart and Mary Corbell and the issue of her sister Elizabeth are her heirs at law, and distributees and the said surviving issue, heirs and distributees of their mother Elizabeth - All the children of Sarah Murden, sold and assigned their interest in the estate to Jordan Marchant, For want of Administration there have been committed to your brother Mordecai Cooke Sheriff of Norfolk County, the estates of George Butts, Nathaniel Butts, Olivia Grispolm, Prudence Tooley, Josiah Murden, Wm Murden, Elizabeth Murden and Josiah Murden - Your brother Thos. Shepherd has administered on the estate of Jordan Marchant, and the complainant Mordecai Cooke is committee of the estate of the testator Josiah Butts administered by his representation. The said Josiah Butts at the date of his will and his death was seized and possessed of two or more tracts of land, one in the County of Norfolk containing acres more or less, and designated in his will as the plantation I at present live

on", and another, or two containing 12 or 15 hundred acres more or less situated in Princeps Anne, and Maximilian B. Buttz has entered an ad. hold the former claiming under the devise, and receive the rents issues and profits. And it is said that by a Dec. date on the 24th of August 1829, an Official Copy of which is herewith filed, Saml. B. Buttz, John N. Buttz, Eliza C. Dec. and Frances his wife, Horatio E. Hall, Sally Buttz, Thomas Cooley, Sally Cummings, Saml. Miller, Catharine Miller, Olivia Smith nee Mrs. Martin, William Williams and Eliza. released all title to said Maximilian B. Buttz. The real estate is not of sufficient value to allow \$800 to each share. — Your complainants wish the construction of the Will to be settled, and the real property and estate divided by sale or otherwise, according to their respective rights, and an account of rents and profits; but this has not hitherto been effected by reason of the multitude of parties and want of agreement among some of them. In tender consideration whereof as your Orators are without relief in the premises but by the aid of a Court of Equity. — To the end therefore, that the said Maximilian B. Buttz, Charles Dec. and Frances his wife whom and each of whom, your Orators pray to have made parties respondents to this bill, May on oath, answer the allegations thereof according to their knowledge or belief, and say if they are true if not, in what particular they are false and what the truth in that particular is according to their knowledge or belief, that the needful account may be taken that partition and distribution may be made of the land, rents and profits and that your Orators may have all and every relief consistent with Equity. — May it please the Court to grant a Subpoena

Taylor & Co

Exhibits filed with
Bill - 3

In the name of God amen I Josiah Buttz of the County of Norfolk being sick of body but of sound mind and memory do make this my last Will and testament in manner and form following to wit: I give and bequeath say Buttz all my lands, negroes, and to say all my real and personal estate after my just debts is paid which debts is to be paid from the sale of my household and kitchen furniture, horses, cattle hogs, sheep, corn fodder and all my farming utensils, the said goods to be sold at six months by the persons giving bond with approved security, and it is my will and desire that provided my daughter Fanny Buttz should die without lawful issue or heir that Maximilian Roush Buttz should have the plantation, I at present bequeath to him and his heirs forever, also it is my will and desire that provided my before mentioned daughter should die without heir, that the said Maximilian Roush Buttz should have, and I give and bequeath to him my negro boy Henry, Martin, Matthew Sam and Negro girl Peggy to him and his heirs forever, and provided my daughter should die without heir, it is my will that all the balance of my estate real and personal should be equally divided between my brothers and sisters children to them and their heirs forever. — Item, I give to negro Eliza his freedom at my decease, and I give and bequeath to said Negro fifty acres of high land which I have

chosen

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=shard from John Warrington, also the said land where a negro by the
name of Charles Cuffee now lives on during the life of said Elizabeth
I do nominate and appoint my loving brother Nathaniel Buttz and my
loving friend Jordan Marchant my whole and sole executors in the
Witness whereof I have hereunto set my hand and affixed my seal this 11th
day of February eighteen hundred and

Teste Jordan Marchant
Malachi Wilson
James ^{his} Manning
mark
John Hodges

Josiah Buttz

At a Court held for Norfolk County the 21st day of April 1800
This last Will and testament of Josiah Buttz dec. was proved by the oaths
of Malachi Wilson and John Hodges & witnesses thereto & ordered to be re-
corded. And upon the motion of Jordan Marchant one of the executors
therein named who made oath thereto, and together with James Callie, Thos.
Shepherd and Wilson Buttz his securities entered into and acknowledged
their bond in the penalty of twelve thousand dollars conditioned as the said
directors certificate is granted him for obtaining a probate thereof in due
form.

Teste Wm. Wilson, clem.

Clerk of Court Wm. Wilson, clem.

Whereas Josiah Buttz on the 11th day of February in the year of our Lord
1800 executed a last will and testament, wherein after giving his whole estate
real and personal to his daughter Fovey Buttz he devised as follows
and it is my will and desire that should my daughter Fovey Buttz should
die without lawful issue or heir that Maximilian B. Buttz should have
the plantation I at present live on to him and his heirs forever and after
ward die without revoking his will which was duly recorded in Norfolk
County Court, and whereas the said Fovey Buttz child of the said Josiah
Buttz afterwards in the same year departed this life without issue and
under age whereby according to the manifest intention of the testator the
said Maximilian B. Buttz became entitled to the plantation on which
the testator resided at the date of his will, and the said Maximilian B.
Buttz entered upon and hitherto has remained in possession thereof and
Whereas the said Josiah Buttz had one brother Nathaniel who had living
at the date of the will and the death of Fovey Buttz six children viz:
Maximilian B. Buttz, John M. Buttz, Frances Buttz now the wife of Chas.
W. Lee, Sally B. Buttz and Nancy Buttz wife of Mills F. Wells, and
one son Arthur L. Buttz born after the date of the will and the death
of Fovey Buttz and whereas the said Nancy Wells and Mills F. Wells by
their said dates on the third day of Decemr 1811 conveyed their rights to
Horatio E. Hall and whereas the said Josiah Buttz had two sisters living

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at his death to wit: Oliver wife of James Gresham and Prudence wife of
Herbert Tooley and also one sister who died before him the said testator named
named Sally wife of William Murdon, and whereas Oliver Gresham had
lived at the date of the Will and death of Sovey Butts the following children
to wit: Sarah Tooley, Mary Tooley wife of William Williams, Oliver
Woodward widow of Mitchell Smith, Elizabeth Woodward wife of William
Williams Nancy Woodward and Thomas Gresham who by his last death
to on the fifteenth day of Oct. 1819 conveyed all his right, to Samuel
Miller of which children, there are now living Oliver, Elizabeth and
Thomas, the others to wit: Sarah and Nancy having died without issue
and Mary wife of William Williams died without issue to wit: Mariah
Williams and Stephen Williams - And whereas the said Prudence Tooley
had living at the date of the Will and the death of Sovey Butts the
following children to wit: James, Thomas, Sally widow of John
Cummings, Catharine wife of Samuel Miller, of whom there are now
living Thomas, Sally and Catharine, the other brother James having
died without issue - And whereas the said Prudence also had two other
children Sovey Tooley and Josiah Tooley both born after the death of
Sovey Butts, and whereas the said Sally Murdon had living at the date
of the Will, and death of Sovey Butts five children to wit: Josiah and William
who died without issue, and Elizabeth wife of Edward Hardy who by their act
conveys their right to Jordan Marchant as will appear from record.

Mary now wife of Richard Corbett who also conveys their right to Jordan
Marchant and Sally Lockhart wife of James Lockhart who also conveys
their right to Jordan Marchant, as do appear from record in Norfolk
County Court, and whereas a Suit has been brought in the Chancery Court
at Williamsburg for the purpose of settling the construction the construction
of the said Will and parties to this presents being anxious to avoid
litigation, and convinced that under the will and the events which have
occurred the said Maximilian B. Butts is entitled by the intention of the
testator to the plantation upon which the said Josiah Butts at the date
of Will resided, have agreed to convey to the said Maximilian B. Butts
all their right and title in and to the said plantation - Now this Indenture
made the twenty fourth day of August in the year Eighteen hundred
and twenty Between Samuel B. Butts, John M. Butts, Charles C. Lee and
Frances his wife Sally B. Butts, Horatio C. Hall, Thomas Tooley, Sally
Cummings, Samuel Miller and Catharine his wife, Olive Smith and
William Williams & Elizabeth his wife of the first part, and Maximilian
B. Butts of the second part, Witnesseth that The said Samuel B.
Butts, John M. Butts Charles C. Lee and Frances his wife Sally B. Butts
Horatio C. Hall Thomas Tooley, Sally Cummings, Samuel Miller and
Catharine his wife, Olive Smith and William Williams and Elizabeth

his wife for and in consideration of the sum of one dollar to them and to each of them in hand paid (the receipt whereof they hereby acknowledge and for and in consideration of those premises have granted bargained, sold aliened, conveyed, confirmed, and released. And by these presents do grant bargain sell alien convey confirm and release unto the said Maximilian B. Butt, all the right, title and interest which they now have or may have in and to the plantation mentioned in the will of the said Josiah Butt as that upon which the said Josiah Butt resided at the date of his will being the plantation situated in the County of Norfolk and now in the occupancy of the said Maximilian B. Butt To have and to hold the said plantation with all rights, tenements and hereditaments unto the same belonging, unto him the said Maximilian B. Butt, his heirs and assigns forever in as ample and full manner as the parties to these presents can convey the same. In testimony whereof the parties to these presents have hereunto set their hands and affixed their seals this twenty fourth day of August Eighteen hundred and twenty

done
for and
sent

Signed, Sealed and delivered
in presence of
John Taylor
Bartholomew Wardworth
Nathaniel D. Butt

Handwritten flourishes and scribbles.

Levin B. Butt
Jm. N. Butt
Charles C. Lee
Frances Lee
Sally B. Butt
Horatio Est. Hall
Thomas ^{husb} _{only} Cooley
Sally ^{husb} _{only} Cummings
Samuel ^{husb} _{only} Miller
Catharine ^{her} _{only} Miller
Olivie Smith
William Williams
Elizabeth Williams

Norfolk County &c

We Robert Butt and Aug. Wilson Justices of the Peace in the County of Norfolk and State of Virginia do hereby certify, that Frances Lee the wife of Charles C. Lee, Catharine Miller wife of Samuel Miller and Elizabeth Williams wife of William Williams parties to a certain deed bearing date on the twenty fourth day of August one thousand eight hundred and twenty of and hereto annexed personally appeared before us in our County aforesaid, and being examined by us fully and apart from their husbands and having the deed aforesaid fully explained to us, we the said Frances Lee, Catharine Miller and Elizabeth Williams acknowledge the same to be their act and deed and declared that had willingly signed sealed and delivered the same

and that they wished not to retract it - Given under our hands and seals
this sixteenth day of September one thousand eight hundred and twenty -

At a Court held for Norfolk County } Bapth Butts *Just*
the 18th day of September 1820 - } Aug: W Wilson *Just*

This act was proved by the oaths of John Taylor, Paulus Wordsworth
and Nathaniel D. Butts and together with the certificate annexed of the
prior examination of the same court admitted to record -

Test Wm Wilson Cl

At a Superior Court of Chancery holden at the former Capitol in the City
of Williamsburg the 27th Jan'y 1831 -

This cause in which the Subpoena appears to have been executed on the defen-
dant, and the bill filed more than four months and the ^{defendant} failing to appear and answer,
the Court doth take the said bill for confessed, came on this day to be heard on the
bill, and an exhibit, and was argued by the ^{plaintiff's} counsel: on consideration whereof
the Court being of opinion that the limitations over, in the will of Josiah Butts,
upon the contingency of his daughter Pooey's death, without issue was void, and
that on the death of the said Pooey in the year 1801 - an infant, the real estate
of the said Josiah descended from her, to her heirs on the paternal side in
exclusion of her maternal kindred, doth adjudge, order and decree that the
Marshal of this Court sell for cash, before the Court house door of Norfolk
County, on some Court day the following real estate mentioned in the bill, to
wit: the plantation on which the said Josiah Butts lived at the time of making
his will, and also the land in the County of Prince Anne of which the said
Josiah Butts did seize and possess, said to contain twelve or fifteen hundred
acres, be the same, more or less, whether contained in one, or more tracts, and
deposit the proceeds of such sale in the Branch Bank of the United States
at Norfolk; subject to the future order of the Court, and Report his proceedings
herein to the Court. And the Court doth further adjudge, order and decree, that
a Commr. of this Court, after such sale shall be completed, ascertain the
portion to which the respective ^{plaintiff's} and ^{defendant's} are entitled of the same, so to
be deposited in Bank and make report thereof to the Court, with any matter
especially stated, deemed pertinent by himself, or which may be required by
the parties to be so stated -

A Statement showing the several heirs and distributees of Pooey Butts deceased
ex parte paternal, and the several interests which they respectively have in the
real and personal estate descended to her by the will of her father Josiah Butts
decd 1803.

Carried forward

Comm: Report

Brought Over

The heirs and distribution of
John Butt personal estate

Samuel B. Butt dec. entitled to $\frac{1}{2}$ part of real & personal estate
 John T. Butt " do " " "
 Henry Moore & Sarah his wife " do " " "
 A. L. Butt " do " " "
 Nancy Butt dec. (without issue) " do " " "
 Charles L. Rice & Frances his wife " do " " "
 Max B. Butt " do " " "

The heirs and distribution of
Olivia Butt personal estate

George T. Martin & Olivia his wife $\frac{1}{10}$ real + $\frac{1}{20}$ of personal estate
 Sarah Davis (dec. without issue) her interest
 in the real estate divided among her brothers
 and sisters in this family stated } Cooke admr $\frac{1}{20}$ pers. est
 Wilson Hall & Mary his wife } issue of M. Tooley $\frac{1}{32}$ part real estate
 Stephen Williams } $\frac{1}{32}$ do " do
 William & Elizabeth his wife $\frac{1}{10}$ of real + $\frac{1}{20}$ personal estate
 Williams admr. Mary Tooley $\frac{1}{20}$ do " do
 Thos. B. Grisplow $\frac{1}{10}$ of real + $\frac{1}{20}$ do " do

The heirs and distribution of
James Tooley personal estate

Sarah Humphreys $\frac{1}{20}$ real and $\frac{1}{24}$ personal estate
 Catharine Miller $\frac{1}{20}$ do " $\frac{1}{24}$ do do
 James Tooley (dec. without issue) his interest
 in real estate among the parties here stated } Mrs. Shipb admr $\frac{1}{24}$ pers. Est
 Thomas Tooley $\frac{1}{20}$ of real and $\frac{1}{24}$ personal estate
 Lorry Tooley $\frac{1}{20}$ do " $\frac{1}{24}$ do " do
 Josiah Tooley $\frac{1}{20}$ do " $\frac{1}{24}$ do " do
 Elizabeth Murden $\frac{1}{20}$ of real and $\frac{1}{24}$ of personal estate
 William Murden $\frac{1}{20}$ do " $\frac{1}{24}$ do " do
 Josiah Murden $\frac{1}{20}$ do " $\frac{1}{24}$ do " do
 Richard Corbitt & Mary his wife $\frac{1}{20}$ do " $\frac{1}{24}$ do " do

The $\frac{1}{2}$ part of the real and personal estate to which Samuel B. Butt
 dec. is entitled, is by his will to Mrs. A. Chandler, to be divided among all
 the foregoing parties.

No 5-

Statement of the Sale of the real estate made by the Marshall under
 the decree in the 2nd suit as per his return annexed to said decree viz:

Cash of Nathl. Wilson for purchase of Land \$220
 Mo " (More. Cooke) " do " do 500
 To " Marshalls Commis. \$20-
 To 2 Bids 10 "
 To Printers Bill for advertising 6.50
 Net Proceeds of Sale 788.50

\$730.00 \$730.00

Carried Over

Next proceed of Sale as above . . . \$188.50

Peter Land late Sheriff of P. Anne filed a hook for taxes due on one tract of the above land amounting to . . . \$39.81

M. Cooke Shiff Norfolk County filed one also . . . 92.43

And at a Circuit Super. Court of Law and Chancery for James City County and City of Williamsburg the 1st Sept 1831 —

order from
James City
to Chancery

By consent of the parties by their counsel, and for reasons appearing to the Court it is ordered that this cause be transferred to the Circuit Superior Court of Law and Chancery for the County of Elizabeth City —

Copied True

James Keatinge Secy

At a Circuit Superior Court of Law and Chancery for Elizabeth City County continued and held at the Court house thereof the 25th day of April 1833 —

This cause came on this day again to be heard on the papers formerly filed together with so much of the report of commr. Robertson filed in another suit in this cause between the same parties as relates to the real estate of Josiah Butts to which part of the report no exceptions were filed, and was argued by counsel on consideration whereof the Court conforming so much of said Report as relates to the matters in this cause, doth adjudge, Order & decree that Charles D. Wingfield late Marshall of the former Superior Court of Chancery for the district of Williamsburg pay the sum of six hundred and eight eight dollars and fifty cents the amount reported in his hands on account of the Sale of real estate made by him under a decree in this cause as follows. To Peter Land late Sheriff of P. Anne thirty nine dollars eight one cents, and Mod. Cooke Shiff of Norfolk County ninety two dollars forty three cents for taxes due on the said real estate, to John N. Butts by Mrs. A. Chandler his atty, Henry Moore and Sarah his wife as one, A. D. Butts Charles D. Lee and Maria his wife and Max B. Butts each twenty four dollars eight three and two fifths cents, To Geo. T. Martin and Olivia his wife as one, Wm. Williams and Elizabeth his wife as one, and Thomas B. Grisham each thirty six dollars and one cent, To Wilson Hall and Mary his wife as one, and Stephen Williams each the sum of eighteen dollars — To Sarah Humphreys, Catharine Miller, Thomas Tooley, Perry Tooley and Josiah Tooley each twenty eight dollars, eighty and 3/4 cents — To Adeline Marchant, William F. Gardner and Fanny his wife as one, Wm. S. Farragut and Susan his wife as one, Jordan Marchant and Jane Marchant each twenty eight dollars eight and three fifths cents — And the Court doth further adjudge, Order and decree that John A. Chandler who is hereby appointed a commr. for that purpose sell at public auction for cash before the Court house door in Norfolk County on some Court day after giving twenty days notice of the time and place of sale the tract of land in commr. Robinsons report mentioned described as a tract of land containing seven hundred acres belonging

to the estate of ~~Henry~~ Butts lying in Horn Quarter in the County of Norfolk commonly known by the name of the Burnt Rail Swamp near the land of Samuel Scott bounded by the main road and the great gun sea and after paying the charges of the sale and the costs of this suit distribute the balance among the persons entitled according to the rates reported by commit. Robertson for the distribution of real estate of Henry Butts. And make report of his proceedings to this Court —

a copy Test

W. Armistead clk

Virginia

At a Circuit Superior Court of law and chancery for the County of Elizabeth City continued and held at the Court house thereof on Monday the 5th day of October 1884 —

William P. Brittingham
vs
Smead and
Record

Be it remembered that on the 25th day of April 1834 William P. Brittingham sued out of the clerks Office of the said Court Subpoenas to answer against Edward C. Malloy, John M. Willis Elijah Phillips executor of Tully Smead and Joseph Phillips which follow in these words —

The Commonwealth of Virginia

To the Sheriff of Elizabeth County Greeting

Subp^a

You are hereby commanded to summon Edward C. Malloy, John M. Willis Elijah Phillips ex^r of Tully Smead and Joseph Phillips to appear at the clerks Office of the Circuit Superior Court of law and chancery for Elizabeth City County, on the first Monday in May next being the rule day of said Court, to answer a bill exhibited against them in the said Court by William P. Brittingham, and unless the said defendants shall answer the said bill within four months thereafter the Court will take the same for confessed and decree accordingly — And this they shall in no wise omit under the penalty of \$333.33³ And have then there this writ Witness My hand S. Armistead clerk of our said Court this 25th day of April 1834 in the 58th year of the Commonwealth

W. Armistead clk

On this Subpoena was the following endorsement:

"To restrain the defendants and all others from selling the forty five and a half acres of land conveyed to the dec^d from Smead to Brittingham in the bill mentioned, until the further order of the Court. The Plaintiff having entered into bond with security conditioned as the law directs." —

Sheriffs Return. Executed

Wm. Tatt Sheriff

W. Armistead clk

The Commonwealth of Virginia

To the Sergeant of Norfolk Borough Greeting —

Subp^a

You are hereby commanded to summon Edward C. Malloy, John M. Willis and Elijah Phillips executor of Tully Smead and Joseph Phillips to

7.
appear at the clerk's Office of the Circuit Superior Court of law and chancery
for Elizabeth City County on the first Monday in May next being the Rule
Day of said Court to answer a bill exhibited against them in the said Court
by William P. Brittingham, and unless the said defendants shall answer
the said bill, within four months thereafter the Court will take the same
for confessed and decree accordingly. And this they shall in no wise omit
under the penalty of \$300.00. And have then there this wit: Wm. W. Wistwood
S. Arrindell clerk of our said Court this 25th day of April 1834 in the 5th
Year of the commonwealth

Wm. Arrindell clk

On this ^{affidavit} ~~bill~~, these words were endorsed:—

To restrain the defendants and all others from selling the sixtys five and
a half acres of land conveyed to the dead from Smead to Brittingham in
the bill mentioned, until the further Order of the Court. the plaintiff having
entered into bond with security conditioned as the law directs —

Sergeants Return —

Executes an Edward M. Mallory, and a copy of this process left with him
April 30th 1834. — The other defendants not found

3

3

Wm. W. Lamb D. for
Wm. B. Lamb Sergeant

To the Hon. Abel P. Upshur Judge of Cir. Su. Court of law and chancery
for the County of Elizabeth City — Humbly complaining, sheweth unto
your Honor your Orator William P. Brittingham, that your Orator and Tully
Smead together agreed to purchase a piece of land of Edward M. Mallory
of which the said Smead was to take a certain part, and your said Orator
a certain other part. That they went to the said Mallory on the 10th day of
November 1830, bought the land, made the cash payment and took a deed
the said Mallory and his wife to said Smead, for the whole land, that Smead
and wife on the 17th day of November 1830 conveyed the whole land in trust
to John M. Willis for the securing the payment of the balance of the purchase
money, when it should fall due to said Mallory, the said Smead
and wife thereafter on the 9th day of December 1830, conveyed to your Orator
the portion of said land which by the aforesaid agreement he was to
have, and your Orator on the 10th of January 1831 conveyed to James
Phillips in trust for Tully Smead the said land to secure the payment
of the balance due therefor to him to Smead, all of which said deeds were
duly recorded, and are now here filed (Office copies) as parts of this bill.
Your Orator states that the said Edward M. Mallory knew that it was a
joint purchase, and he knew that your Orator had placed in the hands
of Smead, two hundred dollars, which formed a part of the cash payment
made to Mallory — as will not be denied to said Mallory and as
can be proved by the witnesses called on at the time —

Your Orator states that Tully Smead is now dead and Elijah Phillips

is his Exor, that he is ready and willing to pay the balance of his purchase money and has tendered the same to the said Exor. of Smead, but he refuses to receive the same, saying that he has no right to release the encumbrances. Your Orator states that the said Tully Smead, by his will directed his land to be sold & the Executor has accordingly sold the same at auction subject to the lien to Mallory; and Joseph Phillips bought it for four hundred dollars. Your Orator states there is reason to believe the estate of Tully Smead will be insufficient to pay all his debts. He states the aforesaid John M. Willis trustee has advertised, or is about to advertise the whole of the land; as well your Orator's as Smead's for sale, under the deed of trust aforesaid. That your Orator has not only paid the cash payment, but also \$118 as will appear by the credits 1. 2 & 3 herewith as aforesaid, but he has offered to pay and is ready to pay the residue of his purchase money, and not only so, but has expended large sums of money in building on the said land, and is now liable to be ruined by having his land sold. Your Orator in no way denies the liability of his land with Smead's land for the payment of the money to Mallory, but inasmuch as Mallory knew the circumstances under which your Orator and Smead in conjunction bought the said land, and for as much as equity requires that Smead's land etc. all with the amount due from your Orator to Smead be first applied to the payment of Mallory's claim and inasmuch as your Orator has no other means of causing this to be done, than by the aid of a court of equity. Your Orator prays that the said Edward C. Mallory and John M. Willis and Elisha Phillips Exor. of Tully Smead and Joseph Phillips may be made Defrs. hereto with apt words to charge them, that due process may issue to compel them to answer this bill on their several corporal Oaths, and your Orator prays that the Comiths. writ of Subpoena of inspection may be issued to restrain the said John M. Willis from selling that part of the said land in the deed mentioned which was conveyed by Smead to your Orator. — until the further order of the Court; and that the said Elisha Phillips Exor. of Smead may be enjoined from proceeding at & on the notes of your Orator given for the said land, but that your Honor will when the land of Smead shall have been sold under the said deed of trust, allow your Orator to pay the amount due from your Orator to Smead, to extinguish any balance which may remain due to Mallory on said deed, in order to relieve your Orator's land from the encumbrances aforesaid. — if any balance shall remain due, and if not that your Orator, on the payment of the same to the said Exor. of Smead may have the deed of trust given by your Orator released; and your Orator prays for such other and general relief in the premises as in good conscience he deserves to have, and as in duty bound he will ever pray.

Braxton Jg

19
Elizabeth City County to wit;

William P. Brittingham this day made oath before me a Justice of the peace for the County aforesaid that this bill is true, Given under my hand this 24th of April 1834 ~

R. G. Banks JP.

An injunction is awarded to restrain the defendants and all others from selling the sixty five and a half acres of land, conveyed by the deed from Smead to Brittingham in the bill mentioned until the further order of the Court, but the plaintiff is not to have the benefit of this Order until he shall enter into bond with securities in the penalty of three hundred dollars with the usual condition ~
Ap. 24th 1834 ~

clerk Sup. Ct. &c
Chy. Elz City County

A. P. Mesher

Know all men by these presents that we William P. Brittingham and William Seth are held and firmly bound unto Edward C. Mallory and John M. Willis, Elipah Phillips executor of Tully Smead dec. and Joseph Phillips in the just and full sum of three hundred dollars to be paid unto the said Edward C. Mallory John M. Willis Elipah Phillips exor. of Tully Smead and Joseph Phillips, their certain attorneys, their executors and admors. or assigns, for the payment whereof well and truly to be made, we bind ourselves our heirs, executors and administrators jointly and severally firmly by these presents, sealed with our seals and dated this 24th day of April 1834 ~

The condition of the above obligation is such that whereas the above bound William P. Brittingham hath obtained from the Surge of the Circuit Superior Court of law and chancery for the County of Elizabeth City an injunction to restrain the said Edward C. Mallory John M. Willis, Elipah Phillips exor. of Tully Smead dec. and Joseph Phillips and all others from selling the sixty five and a half acres of land conveyed by the deed from Smead to Brittingham in the bill mentioned, until the further order of the Court. Now if the said William P. Brittingham shall well and truly pay and satisfy by all such costs as shall be awarded against him, and all such damages as shall be incurred to him in case the injunction aforesaid shall be dissolved ~ then the above obligation to be void, or else to remain in full force and virtue ~

Signed Sealed and acknowledged
in presence of ~

Wm. Armistead clk

William P. Brittingham

William Seth

Elizabeth City County to wit;

I Westwood S. Armistead clerk of the Circuit Superior Court of law and chancery for said County do hereby certify that the within named William Seth this day made oath that after the payment of his just debts he is worth the sum of three hundred dollars ~ Given under my hand this 24th day of April 1834 ~

Wm. Armistead clk

Exhibits ~~filed~~ with the bill -

Exhibits

This Indenture made and entered into this sixteenth day of November in the year of our Lord one thousand eight hundred and thirty between Edward L. Malloy and Eliza his wife of the Borough of Norfolk and State of Virginia of the one part, and Tully Smead of Elizabeth City County and State aforesaid of the other part Witnesseth that the said Edward L. Malloy and Eliza his wife for and in consideration of the sum of sixteen hundred dollars lawful money of Virginia in hand paid by the said Tully Smead at or before the sealing and delivery of these presents, the receipt whereof the said Edward L. Malloy doth hereby acknowledge, and thereof, and of every part and parcel thereof doth hereby clearly exonerate acquit and discharge the said Tully Smead his heirs, executors, administrators and assigns, and every of them forever - They the said Edward L. Malloy and Eliza his wife have granted bargained sold aliened infeoffed and confirmed, and by these presents do grant bargain sell alien infeoff and confirm unto the said Tully Smead his heirs and assigns forever, a certain piece or parcel of land in the County of Elizabeth City and State of Virginia and bounded as follows: On the North by Harris Creek and the lands of William Bustz and Henry Guy, on the East by the lands of the heirs of M^{rs} Guy now dead, Lehas. A. Cooper, the heirs of Jane Topping now deceased, the heirs of Smith Topping dead and the lands of Thomas Watts, on the South by the Duck Roce dead, on the West by the lands of James Benthall and Mathaniel Goddard and containing, about three hundred and ninety one acres more or less being all that tract of land except about twenty five acres sold William Bustz that was conveyed to the said Edward L. Malloy by his Father as per deed bearing date and duly recorded in the clerks Office of Elizabeth City County together with the buildings thereon, the ways, water rights and tenements thereto belonging - To have and to hold the piece or parcel of land and all the other, the premises hereby granted bargained and sold or mentioned or intended to be hereby granted bargained, and sold and every part or parcel thereof with their and every of their appurtenances unto the said Tully Smead his heirs and assigns forever, to the only proper use and behoof of him the said Tully Smead his heirs and assigns forever - And they the said Edward L. Malloy and Eliza his wife do hereby for them and their heirs grant, that they the said Edward L. Malloy and Eliza and their heirs the said piece or parcel of land and premises hereby granted or mentioned to be granted and every part or parcel thereof with their appurtenances unto the said Tully Smead his heirs and assigns against them the said Edward L. Malloy and Eliza his wife and their heirs and against the claim or claims of all and every person or persons whatever, shall and will warrant

and forever defend by these presents. In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

Signed sealed & delivered
in presence of

John P. Topping
Michael P. Gray
Isaac P. D. Topping

Edward C. Mallory

Eliza Mallory

Norfolk Borough Sc.

We Robert B. Stark and George T. Kinnon Aldermen of the Borough of Norfolk in the State of Virginia do hereby certify that Eliza the wife of Edward C. Mallory parties to a certain indent bearing date on the 18th day of November in the year of our Lord one thousand eight hundred and thirty and hereunto annexed personally appeared before us in our Borough aforesaid and being examined by us privately and apart from her husband and having the said affidavit fully explained to her she the said Eliza acknowledged the same to be her act and deed and declared that she had willingly signed sealed and delivered the same, and that she wished not to retract it: Given under our hands and seals this 17th day of Nov. 1830.

In Eliza City Court Clerk Office Nov 18th 1830

This Indenture was acknowledged by Edward

C. Mallory party thereto and with the certificate of the prior examination of the same court annexed admitted to record.

Robert B. Stark

Geo. T. Kinnon

Teste Minister clk
a copy Teste Minister clk

exhibit.

This Indenture made this 17th day of November one thousand eight hundred and thirty between Tully Smead and Diana his wife of the County of Elizabeth City and State of Virginia of the first part, Edward C. Mallory of the Borough of Norfolk and State aforesaid of the second part and John M. Willis mutually chosen trustee by the parties of the third part. Whereas the said Tully Smead is indebted to the said Edward C. Mallory in the just and full sum of eight hundred dollars, to be paid in four different instalments as by notes bearing date the 17th of November 1830, which sum is half the purchase money mentioned to have been paid in a deed from the said Edward C. Mallory to the said Smead bearing date the sixteenth day of November 1830, which debt with the legal interest accruing thereon the said Tully Smead is willing and desirous to secure. Now this Indenture witnesseth that for and in consideration of the premises and also for the further consideration of one dollar of lawful money of Virginia to the said Tully Smead in hand paid to the said John M. Willis trustee aforesaid at and before the sealing and delivery of these presents

the receipt which is hereby acknowledged, he the said Tully Smead hath given, granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth give, grant, bargain, alien, enfeoff, release, and confirm sell to the said John M. Willis his heirs and assigns forever, all that tract and parcel of land lying and being in the County of Elizabeth City in the State of Virginia and bounded as follows: on the North by Harris Creek and the lands of William Bush and Henry Ivey senr. On the East by the lands of the heirs of Wm Ivey senr. and the Charles N. Cooper the heirs of John Topping senr. and the heirs of Smith Topping senr. and the land of Thomas Watts on the South by the Bush Roe land, on the West by the land of James Branthall and Nathl. Spidins and containing about three hundred and ninety one acres more or less being all that tract of land, except about twenty five acres sold William Bush that was conveyed to the said Edward C. Mallory by his Father as per deed bearing date

and recorded in the clerk's office of Elizabeth City County, together with the buildings thereon the ways, water rights, and tenements thereto belonging. To have and to hold the said hereby granted or intended to be hereby granted tract or parcel of land and premises, with its appurtenances unto the said John M. Willis trustee aforesaid his heirs, executors, administrators and assigns forever, to the only proper use and behoof of him the said John M. Willis trustee aforesaid his heirs, executors administrators and assigns forever — And the said Tully Smead for himself his heirs, executors and administrators doth hereby covenant promise and agree to and with John M. Willis trustee aforesaid his heirs executors administrators and assigns forever in manner and form following — That is to say, the said Tully Smead his heirs executors, and administrators the aforesaid tract or parcel of land and premises with their appurtenances unto the said John M. Willis trustee aforesaid, his heirs executors, administrators and assigns against all persons whatsoever shall and will warrant and forever defend by these presents — Upon trust nevertheless that the said John M. Willis trustee aforesaid, his heirs, executors and administrators shall permit the said Tully Smead to remain in quiet possession of the said tract or parcel of land and premises with its appurtenances and take the profits thereof to his own use until default be made in the payment of the above notes or either of them as they respectively become due, and then upon this further trust, that he or his heirs, executors, administrators or assigns so soon after the happening of such default of payment as he, his heirs, executors

Administrators

or assigns may think proper, or the said Edward C. Mallory his executor administrators or assigns, shall request, sell the said tract of land and premises with the appurtenances or such part of the hereby granted premises, as the Trustee or his representative hereby authorized to act, shall think sufficient for the purpose, and shall think proper to sell to the highest bidder at public auction for ready money, after having fixed the time and place of sale at his discretion, and giving twenty days notice thereof in one or more of the news papers published and printed in the Borough of Norfolk and also notified the same by advertisement to be set up at the door of the Court house of Elizabeth City County on some Court day previous to the day of sale, and out of the monies arising from such sale, shall after satisfying the charges thereof and all other charges attending the premises pay the said Edward C. Mallory his executor, administrators or assigns the said amount of the notes or note with the interest thereon as it or they may respectively become due, and the balance if any shall be paid to the said Tully Smead his heirs, executors, administrators or assigns — But if the whole of the notes as they respectively become due shall be fully paid off and discharged to the said Edward C. Mallory his heirs, executors, administrators or assigns on or before the day and year when the respective notes become due and payable so that no default of payment of the said notes be made then this Indenture to be void, or else to remain in full force and virtue In Witness whereof the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written

Signed sealed and delivered
in presence of

John S. Westwood
Spencer Drummond
Daniel ^{the} _{and} Mahon

Tully Smead
Diana Smead
Edward C. Mallory
John M. Willis

Elizabeth City County No. 1017

We Wm. Hopf and Le Hubbard Justices of the peace in the County and State aforesaid, do hereby certify that Diana Smead the wife of Tully Smead parties to a certain deed of trust bearing date 17th day of November in the year of Our Lord one thousand eight and thirty, and hereto annexed personally appeared before us, in our County aforesaid, and being examined by us privately and apart from her husband, and having the deed aforesaid fully explained to her, she the said Diana Smead acknowledged the same to be her act and deed, and declared that she had willingly signed sealed and delivered the same and that she wished not to retract it

Given under our hands and seals this 17th day of November 1830-

In Elizabeth City County Clerks Office Nov 18th
1830 ~

Wm. H. H. 18. 1833
C. H. H. 18. 1833

This instrument was acknowledged by Zully Sneed and Mrs. M. H. Sneed parties thereto and with the certificate annexed of the prior examination of the same covert admitted to record.

Merritt

2 Copy 20th
Ministerial clb

This Indenture made this twenty ninth day of December in the of our Lord one thousand eight hundred and thirty between Tully Smead and Diana his wife of the one part William P. Brittingham of the other part both of the County of Elizabeth City and State of Virginia, Witnesseth that the said Tully Smead and Diana his wife for and in consideration of four hundred and thirty eight dollars and fifty cents current money of Virginia to them in hand paid by the said Wm. P. Brittingham, the receipt whereof the said Tully Smead and Diana his wife do hereby acknowledge, have bargained sold and delivered, and to their heirs and assigns do grant, bargain, sell and deliver unto the said William P. Brittingham his heirs and assigns forever a certain tract or parcel of land lying and being in the County of Elizabeth City and bounded as follows to wit: On the North by the main fox hill road, on the East by the lands of Thomas Watts; on the South by the Buck rose tract, and on the West by the lands of Walker Watts and James Bruthall containing sixty five and an half acres, be the same more or less, the same being all the land lying over the fox hill road belonging to the tract of land which the said Tully Smead purchased from Edward L. Malloy: To have and to hold the said tract of sixty five and an half acres with all and singular the appurtenances unto the said William P. Brittingham his heirs and assigns forever, and the said Tully Smead and Diana his wife for themselves their heirs, executors, administrators and assigns and all and every person whatsoever shall and will warrant and forever defend, the same right they purchased from Edward L. Malloy to their heirs and assigns — In Witness whereof the said Tully Smead and Diana his wife have hereunto set their hands and affixed their seals this day and year first above written —

Signa sealed and delivered
in presence of 3
Wm. A. Hooper Thos. Hooper
H. A. Hubbard

Truly, Sincerely
Wiana + Sincerely
mark

Elizabeth City County, State of Virginia to wit

We Wm. A. A. and Christopher Hubbard, Justices of the peace in the County of
said in the State of Virginia do hereby certify that Diana Lucas the wife of
Tully Lucas parties to a certain deed bearing date the 29th day of December
1830- and hereunto annexed personally appeared before us in our County afore-
said and being examined by us privately and apart from her husband and
having the said deed afore-said fully explained to her, she the said Diana acknow-
ledged the same to be her act and deed and declared that she had willingly
signed sealed and delivered the same and that she wished not to retract it
Given under our hand and seal this 29th day of December 1830-

In Elizabeth City County, Clerk's Office July 5th 1831

Wm. A. A. J. P. C.

Ch. Hubbard J. P. C.

This Indenture was acknowledged by Tully Lucas party thereto and with the
certificate annexed of the prior examination of the same court admitted
to record -

Test Wm. A. A. J. P. C.

Ch. Hubbard J. P. C.

This Indenture made this tenth day of January in the year of our Lord
one thousand eight hundred and thirty one between William P. Brittingham
of the first part, James Phillips the trustee of the second, and Tully Lucas of the
third part - Whereas the said William P. Brittingham is greatly indebted to the
said Tully Lucas in the sum of two hundred and thirty eight dollars and
fifty cents current money of Virginia to be paid in four instalments, as by
notes bearing date July 5th 1831, the first to be paid on the first day of
December 1831 - the second to be paid on the first day of December 1832 -
the third to be paid the first day of December 1833 - and the fourth to be
paid the first day of December 1834 - which debt more fully appears with
the legal interest thereon accruing the said William P. Brittingham is
willing and desirous to secure - (Now this Indenture Witnesseth: that
for and in consideration of the premises and also for the further consideration
of one dollar of lawful money of Virginia to the said William P. Brittingham
in hand paid by the said James Phillips, trustee, at and before the sealing
and delivery of these presents the receipt whereof is hereby acknowledged, he the said
William P. Brittingham hath given, granted, bargained, sold, aliened, conveyed,
released and confirmed and by these presents, doth give, grant, bargain sell
alien convey release and confirm to the said James Phillips his heirs
and assigns forever, all that tract or parcel of land lying and being in
the County of Elizabeth City and State of Virginia containing sixty five
and a half acres be the same more or less and bounded as follows to wit
on the North by the main fox hill road, on the East by the lands of
Thos. Watt, on the South by Buck Roe tract, on the West by the lands of

Walker Watts and James Benthall the same being all the land lying south of the main fox hill road belonging to the tract of land which the said Tully Street purchased from Edward C. Mallory with all and singular the appurtenances to the said tract or parcel of land belonging or in any wise appertaining, in and to the said granted or intended to be hereby granted tract or parcel of land and premises - To have and to hold the said hereby granted or intended to be hereby granted tract or parcel of land and premises with its appurtenances unto the said Jas. Phillips his heirs executors administrators and assigns forever, to the only proper use and behoof of the said James Phillips his heirs executors administrators and assigns forever - And the said William P. Brittingham for himself his heirs executors administrators and assigns doth hereby covenant promise and agree to and with the said James Phillips his heirs, executors, administrators, and assigns forever, in manner and form following: that is to say that the said William P. Brittingham his heirs, executors and administrators the afore-said tract or parcel of land and premises with all their appurtenances unto the said James Phillips his heirs executors administrators and assigns against all and every person whatsoever shall and will warrant and forever defend by these presents: Upon Trust nevertheless, that the said James Phillips his heirs executors and administrators shall permit the said William P. Brittingham to remain in quiet and peaceable possession of the said piece or parcel of land and premises with its appurtenances, and take the profits thereof to his own use until default be made in the payment of the said sum of two hundred and thirty eight dollars fifty cents either in whole or in part, and then upon this further trust, that he his heirs, executors administrators or assigns, shall and will so soon after the happening of such default or the said Tully Street his heirs, executors, administrators or assigns of payment, as him or his heirs executors administrators or assigns shall request, sell the said tract of land and premises with its appurtenances or such part of the hereby granted, as the trustee or his representative hereby authorized to act shall think sufficient for the purpose, and shall think proper to sell to the highest bidder for ready money at public Auction after having fixed the time and place of sale at their own discretion and given ten days notice thereof in one or more of the news papers printed in the Borough of Norfolk and also notified the same by advertisement to be set up at the door of the Court house of Elizabeth City County on some Court day previous to the day of sale - And out of the monies arising from such sale shall after satisfying the charges thereof and all

other

expenses attending the premises, pay to the said Tully Smead his heirs
 executor, administrators or assigns the said sum of two hundred and
 thirty eight dollars and fifty cents with the interest which may thereon
 lawfully have accrued, and the balance if any shall pay the said Wm
 P. Brittingham his heirs, executors, administrators or assigns
 But if the of the said sum of two hundred and thirty eight dollars
 and fifty cents, shall be fully paid off and discharged to the said Tully
 Smead his heirs executor administrator or assign on or before the
 dates of the note as they respectively become due, as mentioned per note
 when the same is payable so that no default of payment of the said
 sum of two hundred and thirty eight dollars and fifty cents be made
 then this indenture to be void or else to remain in full force
 In Witness whereof the said parties to these presents have hereunto set
 their hands and affixed their seals the day and year first above written

Signed, sealed and delivered
 in presence of

William P. Brittingham
 James Phillips
 Tully Smead

In Elizabeth City County clerk's Office Feb 5th 1831
 This indenture was acknowledged by all the parties thereto and admitted
 to record

Test Wm Armistead clerk
 a copy Test Wm Armistead clerk

In the name of God amen: I Tully Smead of Elizabeth City County being in
 perfect sense and memory but finding deceases are raging in our County, and
 feeling at the same time some simptoms of the same, do make constitute and ordain
 this my last Will and testament, in manner and form following viz:
 In the first place I give and recommend my soul into the hands of God that
 gave it, and my body to the earth, hoping at the general resurrection I shall
 receive the welcome approbation "enter thou into the joys of thy Lord;" And as
 touching such worldly estate as it has pleased God to bless me with in this
 life; I give and dispose of it in the following manner and order to wit:
 Item, my wish and desire is for all my just debts to be paid out of any pro-
 perty, I hold either personal or real estate - Item, it is my wish and desire
 after all my just debts are paid, that my true and loving wife Nianah Smead
 should have one third of my estate, both personal and real, and the balance
 to be equally divided between my two sons George W. R. Smead and Thomas
 J. Smead, - and my further wish and desire is, if any thing should be coming
 to the above named children, to be disposed of in giving them a liberal educa-
 tion, and I wish them particular noticed in that respect, as I am fully
 satisfied, that G. W. R. Smead is fully calculated for the reception of science
 and

and learning. And I do hereby appoint Mr. Elijah and James Phillips my lawful executor to dispose of my estate to the best advantage, to pay all my just debts and distribute my estate to the distributees as is above stated. In acknowledgement whereof I confirm this to be my last will and testament. In witness whereof I have hereunto set my hand and seal this eighth day of September in the year of our Lord one thousand eight hundred and thirty-two signed sealed and delivered in presence of — 3

Tully Smead 

At a Court held for the County of Elizabeth City October 25th 1832

This last will and testament of Tully Smead dec^d was proved by the Oaths of Charles C. Cooper, B. M. Calvert and Saul Willeford, there being no witnesses to the same who were sworn to prove the hand writing of the testator, and who severally declared that they were well acquainted with the hand writing of said Smead, and verily believed the said will to be wholly written and signed by him, and thereupon the same was ordered to be recorded, as his last Will and testament —

Teste  Charles C. Cooper

(No 1) Rec^d of William P. Brittingham the sum of two hundred dollars in part payment of his portion of the farm purchase from Edward G. Mallory November 15th 1830.

Teste
John P. Topping

Tully Smead


(No 2) Rec^d of William P. Brittingham the sum of fifty nine dollars with interest thereon, it being the amount of a bond I held against him for the several payment of the land sold him by me —
September 1st 1832 —

Tully Smead


(No 3) Rec^d of William P. Brittingham the sum of fifty nine dollars with interest thereon, it being the amount of a bond I held against him for the first payment of the land sold him by me —
January 9th 1832 —

Tully Smead


Answer of
Smead dec^d.

The answer of Elijah Phillips Dec^d of Tully Smead dec^d to the bill of complaint of William P. Brittingham exhibited against him and others in the Circuit Superior Court of law and chancery for the County of Elizabeth City —

This deft saving and reserving to himself all manner of advantages and benefit of exception to the many inaccuracies &c in said bill contained, for answer thereto, or to so much as he is advised it is material for him to make answer to, answers and says, that he has no knowledge of any bargain and purchase by Tully Smead and the complainant from (Mack)

as set forth in the bill. This defendant admits the purchase by Smead from Mallory, as far as it was Smead's act for himself: he also admits the sale and conveyance to the complainant by Smead and wife and charges it as a purchase by the complainant from Smead, and not as a consideration as to any bargain with Mallory. The defendant admits the act of trust to John M. Willis by Smead and wife to secure Mallory; and also the trust deed to James Phillips by the complainant to secure Smead. As to the sum of money which the complainant charges that he paid to Smead as a part of the bargain first made with the complainant and Smead with Mallory, this deft knows nothing, but only presumes that all, or any money which the complainant placed in the hands of Smead, was for and in consideration of his purchase from Smead, and not for the pretended purchase as charged to be joint from Mallory. This deft is the Exr. of Tully Smead; denies any direct tender of any money from the complainant for his purchase from Smead, admits that the complainant tendered of some such thing (but produced no money) provided this deft would release the complainant's land from all incumbrances and which this deft agreed to do so far as Smead had any lien, but no further. That Smead's interest in his land is admitted, and a copy of the advertisement of sale is herewith filed, and prays to be taken as an exhibit, and as a part of this answer. This Deft. saith that the land was sold at the price of \$400- dollars surplus beyond the lien to Mallory and that his brother Joe Phillips became the purchaser; that Joe Phillips is the holder of the trust originally made to Mallory, being the assignee of Mallory as to the trust and debt created under it; and by being the purchaser of the land under the sale made by this Deft. as Exr. under the Will a copy of which is here annexed as stated in the bill: the lien was discharged, because he then held both the equitable as well as legal title, being the assignee of Mallory. This Defendant admits that there is no doubt in his mind that the estate of Smead is insufficient to discharge his debts, which was a reason with him to sell the land as Exr. he having frequently called upon his brother Joe Phillips to instruct Willis to close the trust, but his said brother always refusing to do so. This Deft. believes that the land would have sold for considerably more, but for the reason that as Joe Phillips as assignee of Mallory had it in his power to make other bidders pay well, he having a considerable portion of the money to receive; no matter who should be the purchaser save himself, deterring others from purchasing. This deft admits that Willis has since the sale by this Defendant, again sold the land which was sold by this Defendant and that a certain Person Watson (who is consent of this deft. and Joe Phillips the first purchaser took the first purchase in lieu of Joe Phillips.

and has paid the \$400 and rec'd a deed from this deft and became
 to all intent and purposes bound for the contract and bargain which Joe
 Phillips had entered into with this deft for the first purchase of the land
 aforesaid has again purchased the same from Willis as trustee at the
 price of \$525, as this defendant hath understood. — This defendant said
 that he hath been informed, and if necessary expects to be able to prove it
 that in consequence of some sort of combination between the said Watson
 and the complainant at the sale by Willis the land was sold at the de-
 ad price of \$525 above named and bought in by Watson altho he had
 purchased as first named. — This Defendant saith that he hath been
 informed that Watson said to the complainant, that if he would not
 bid, that he Watson would release the complainant's land from all
 encumbrances and this deft believes that in consequence thereof the land sold
 for the small price above named, that is if the first sale did not pro-
 duce a like effect, it certainly prevented the complainant from bidding, al-
 tho he had commenced as this defendant is informed. — This deft saith that
 it may or may not be true that the complainant hath made the payments
 as charged: he believes that the complainant did make some payments
 to Smead for his purchase from Smead, and he is still indebted to Smead
 in a sum rather more than 118 dollars by two notes of \$59 and a piece ce-
 rts, each: one now due, and the other in December next, which this Deft.
 believes to be fairly and justly due to Smead's estate: and that it ought to
 be a fund for Smead's creditors and not to go to Mallory's claim, because
 as this Deft has above stated he believes that by the sale of Smead's inter-
 est in his land made by this deft as Executor of Smead under his Will, the sale
 was a good and bona fide sale, and that Joe Phillips and Watson the pur-
 chasers, knew at the time of their several purchases that by the sale Mal-
 lory's lien was discharged as to the complainant, and ought to be satisfied
 by one or the other of them so far as Smead's interest was concerned in
 This Defendant admits that the complainant has expended something in
 buildings &c but that he did this knowing his liability. — This deft prays
 that the complainant may be left with his liabilities at Large, and saith
 that so soon as he discharges them to this Deft. as Exec. he is ready and
 willing to release him so far as he is in duty bound. — This deft having
 answered prays hence to be dismissed with his reasonable costs to
 Elizabeth City County to wit:

The above answer was sworn to by Elijah Phillips (whose name is above written)
 before me
 Justice of the peace for the County of Elizabeth City on this 29th day of August in the year 1834

R. G. Brantley Jr.

Exhibit filed with the answer —

Notice

Will be sold on Tuesday the 14th day of April 1834 between the hours of 11 o'clock A. M. and one P. M. of the same day the whole of the late Tully Sned interest in that tract of land, upon which he did seize and possess, supposed to contain 310 acres more or less, and which he purchased of a certain Edw. L. Malloy and wife, the deed for which is of record in the Clerk's Office of the County of Elizabeth City. The said land is situate at the head of Harris Cr. in the neighborhood of Fox Hill in the County of Elizabeth City; the sale of the land, will take place, on the premises and will be sold for cash, subject to a lien created by deed of trust executed to John M. Willis as trustee for the benefit of said Malloy, as for deed of trust of record may be seen. The purchase money is expected to be paid before, or at the time that a deed or deeds will be ready for delivery — also at the same time and place will be sold also for cash all of said Sned's interest in and to certain Slaves viz: Old Isaac, Lily and her increase, Pearl and her increase, and Dinah. should there be any doubt or enquiry as to title, either in the above Slaves or as to the land; the subscriber will so far as he may be enabled from any knowledge in his possession explain. — The subscriber selling Exor. of Sned will sell only such title as may be vested in him under the said land and which in his character as Executor he may have the right of selling —

March 20th 1834 —

Elipah Phillips Exor.
of Tully Sned dec'd

At a Circuit Superior Court of law and chancery for the County of Elizabeth City continued and held at the Court house thereof on Monday the 5th day of October 1834 —

William P. Brittingham

Edward L. Malloy John M. Willis Elipah Phillips Exor. of Tully Sned and Joseph Phillips

This cause came on this day to be heard on the bill, the answer of Elipah Phillips Exor. of Tully Sned, the exhibits of Plt. and Def. and appearing to the Court that the bill had been filed and the process served on the Defs. Edward L. Malloy John M. Willis and Joseph Phillips more than four months and they having failed to answer the pl't. bill; the Court as to them is taken for confessed, and the Court on consideration, doth adjudge, Order and decree, that the complainant William P. Brittingham do to the said John M. Willis trustee the sum of one hundred and eighteen dollars, with interest thereon after the rate of six per cent per annum from the 10th day of November 1834 till paid: and that the Defs. Elipah Phillips Exor. of Tully Sned surrender to the said W.P. Brittingham to be

cancelled, the two notes mentioned in the bill; being the 3^d & 4th notes. And that the said John M. Willis execute a deed of release to the said M. P. Brittingham for the said sixty five and a half acres of land in the deed from Smead to Brittingham particularly described. And the Court doth further assign over and decree that the Def. Elijah Phillips Esq. of Tully Smead pay to the said John M. Willis the balance due on the said deed of trust to Mallory; to be by him said Trustee paid over to the said E. C. Mallory as his due. — And the Court doth further decree that the Def. Elijah Phillips Esq. of Tully Smead, out of the profits of the said Smead pay to the pet. his costs to him expended in the prosecution of this Suit —

a Copy Verdict *Wm. Armistead Clk*

Virginia

At a Circuit Superior Court of Law and Chancery held for the County of Elizabeth City at the Court house thereof on Saturday the 25th day of April 1835 —

Stakes
Xatimer
Recd

Be it remembered that on the 25th day of April 1834 William Stakes sent out of the clerks Office of the said Superior Court a Subpoena to answer against Edward Xatimer and Mary his wife which follows in these words —

The Commonwealth of Virginia

To the Sheriff of Elizabeth County, Greeting

Subp

You are hereby commanded to summon Edward Xatimer and Mary his wife to appear at the clerks Office of the Circuit Superior Court of Law and Chancery for Elizabeth City County, on the first Monday in May next being the Rule day of said Court, to answer a bill exhibited against them in the said Court by William Stakes. And unless the said defendants shall answer the said bill, within four months thereafter, the Court will take the same for confessed, and decree accordingly. And this they shall in no wise evit under the penalty of \$333.33³. And have then there Thos. Wick. Witness Richard S. Armistead, clerk of our said Court, this 25th day of April 1834 in the 58th Year of the Commonwealth —

Sheriffs Return "executed"

Ans. Tabb Shff —

Bill

To the Honorable Abel P. Upshur Judge of the Circuit Superior Court of Law and Chancery for the County of Elizabeth City —

Humly complaining sheweth unto your Honour your Orator — William Stakes of said County, that on or about the 1st day of November 1833 one Edward Xatimer of said County, sold to your Orator an acre of land, lying

immediately on Mill creek, in said County, and being part of a tract of land tiller
 and owned by said Latimer, and adjoining another acre of the same land sold and
 conveyed by said Latimer to James Shelton, by deed of record in clerk's office of
 this County. That your Orator paid to the said Latimer, the sum of fifty dol-
 lars, in cash, for said acre of land, that being the purchase money agreed
 on, and the said Latimer being then under age no conveyance was at that
 time made for said land; but upon the payment of said sum of fifty
 dollars, a receipt was executed to your Orator by said Latimer, and also
 by James Shelton, who was then the guardian of said Latimer, acknowl-
 edging the receipt of the money and stipulating for the execution of a deed
 for said land, when the said Edward should arrive at age. - The said
 receipt is herewith filed marked A. and prayed to be taken as a part of
 this bill. - That the said Latimer actually received the said purchase money
 of your Orator on giving the receipt aforesaid, and after he arrived at age
 about the 10th day of March last, he and his wife Mary Latimer, execu-
 ted and delivered to your Orator a deed for the said acre of land which was
 acknowledged before John H. Evans and William S. Ironsinger, subscribing
 witnesses thereto. - That a few days after the delivery of said deed to your Orator
 the said Latimer applied to your complainant, and requested the loan of
 said deed for the purpose of drawing another deed, (as he stated) for the con-
 veyance of other land, which he said he had sold, and promising to return
 it to your Orator immediately. - Your Complainant, not suspecting any
 fraudulent intention on the part of said Edward, delivered him the deed
 for the purpose of copying another as aforesaid, when the said Edward,
 as soon as he got possession of it, put it in his pocket and declared he
 would not return it, or execute any other deed to your Orator. - That the said
 Latimer still holds the purchase money, and retains the deed of your
 Orator as aforesaid, and refuses to execute any other, with a view as your
 Orator believes of depriving him of the evidence of his title to said land, and
 at some future day of claiming the same against your Orator. That
 your Orator has commenced building and erecting improvements on said
 land, under the faith of said purchase. - That on the day of the purchase
 aforesaid, the said Latimer also sold an acre of the same land adjoining
 the acre purchased by your Orator, to James Shelton for the same price and
 conveyed the same to him, after arriving at age, by deed, executed & delivered
 on the same day that he made the conveyance aforesaid to your said
 Orator - and which conveyance has been recorded as aforesaid. - That the
 acre of land purchased by your Orator & conveyed by deed as aforesaid adjoins
 that sold and conveyed to said James Shelton, and in said deed made
 to your Orator was described and bounded as follows viz -

That the said Latimer positively refuses to return the said deed to your Orator, or to execute any other, which is contrary to Equity and good conscience and tends to the injury of your Complainant. In tender consideration whereof and for as much as your complainant is without remedy in the premises, save by the aid of a Court of Equity, where such matters are properly cognizable. To the end therefore that he may be relieved and justice done in the premises, he prays, that the said Edward Latimer and Mary his wife, may be made parties defendants to this bill, with apt and proper words to charge them as such, that they may be compelled to answer the same on oath, as fully as if the several allegations thereof were here again repeated, and they thereto more particularly interrogated. That the said Edward may say whether he did not sell the said acre of land to your Complainant as aforesaid, for the price aforesaid and whether he did not execute the said receipt marked A. that he may also say whether he and said defendant Mary did not on or about the 10th March 1834, and after he came of age, execute a deed for said acre of land to your Orator as before stated, and whether he did not afterwards obtain the same from your Complainant as he is in status. Whether the said deed is now in his possession; and if not, where it is - whether he has destroyed the same or not. That the said deft. Edward may be decreed to produce and deliver the said deed to your Orator, if now in his possession; and if not, that the said Latimer and wife or one of them, may be decreed to execute a conveyance to your Orator for said acre of land - and that your Complainant may have such other and further relief in the premises as may be consistent with Equity and good conscience. May it please your Honor to grant to your Orator, the Comuth. Subpoa P.

Southall Jfg.

Exhibit filed with Bill

Exhibit
filed with
Bill

(Mill Creek Nov 14th 1833 - Received of William Stokes the sum of fifty dollars for one acre of land, lying on Mill Creek, formerly Latimer which deed is to be executed when I become to the age of twenty one -

Witness
James Ogilvie
Wm. x Hogshire

James Shelton Sec
Edward Latimer

This Indenture made this fourth day of May in the year eighteen hundred and thirty four, and in the fifty eighth of American Independence, between Edward Latimer and Mary his wife of the one part, and William Stokes of the other

part: Witnesseth that the said Edward Latimer and Mary his wife in consideration of the sum of fifty dollars of lawful money of Virginia to them in hand paid by the said William Stokes at or before the making and delivery of these presents, the receipt whereof is hereby acknowledged: have bargained and sold and by these presents do and each of them doth bargain and sell unto the said William Stokes his heirs and assigns a certain acre of land lying and being in Elizabeth City County and bound on Mill Creek on the South West corner adjoining James Shelton Sen by a Sassafras post: On the North East corner a locust post: On the South East corner a locust post. and on the South West corner Stone adjoining James Shelton Sen together with all the singular houses, gardens, water, water courses privileges and appertinances whatsoever to the said acre of land, or with the same used or enjoyed or accepted, taken, reputed or known, as part parcel or member thereof or as belonging to the same or any part thereof: and the reversion and reversions, remainders and remainders, yearly and other rent, issues and profits thereof, and of every part and parcel thereof: To have and to hold the said acre of land with the tenements, hereditaments, and all and singular other the premises herein before mentioned, or intended to be bargained and sold, and every part and parcel with every of their rites members and appertinances unto the said William Stokes his heirs and assigns forever to and for the only proper use and behoof of him the said William Stokes his heirs and assigns forever. And the said Edward Latimer and Mary his wife for themselves and their heirs the said acre of land with all and singular the premises and appertinances before mentioned unto the said William Stokes his heirs and assigns free from the claim or claims of them the said Edward Latimer and Mary his wife or either of them, their or either of their heirs and of all and every person or persons whatsoever shall will and do warrant and forever defend by then presents: In Witness whereof the said Edward Latimer and Mary have hereunto set their hands and seals the day and year first above written

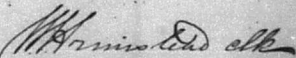
Signed sealed and delivered
in presence of
James Shelton Sen }
Littleton J. Topping }

Edward Latimer 

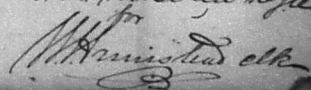
Mary Latimer 

In Elizabeth City County, Clerks Office June the 7th 1834

This Indenture was acknowledged by Edward Latimer party thereto and admitted to record

Teste  Clerk

a Copy Teste Jno. M. Todd Esq

 Clerk

At a Circuit Superior Court of law and Chancery held for the County of Elizabeth City at the Court House thereof on Saturday the 25th day of April 1835.

William Rakes

Plt

Edward Latimer and Mary his wife

Def.

This cause (in which the Subpoena appears to have been duly executed and still filed more than four months, and the def. still failing to appear and file his answer, on motion of the plt. his bill is taken for confessed) came on this day to be heard on the bill and exhibits filed, and was argued by the plt's counsel: on consideration whereof, and it appearing to the Court, by the exhibit marked B that the conveyance prayed for in the bill has been executed by the Defendant since the institution of this suit the Court doth advise, order and decree that the defendant Edward Latimer pay to the plt his costs by him about his suit in this behalf expended.

a Copy Dated

W. H. Mendenhall clk

Wilson &
Maitland
&
Hoyes
Record

Virginia

At a Circuit Superior Court of law and Chancery for Elizabeth City County continued and held at the Court House thereof on Saturday the 25th day of April 1835.

Be it remembered that heretofore to wit, at Rules held in the Clerk's Office of the Chancery District Court directed by law to be held at the former Capital in the City of Williamsburg in March 1828 came Alexander Wilson and Robert Maitland by their counsel and filed then and there their bill against James Davis and Mary his wife and John Hodges in Chancery which bill follows in these words to wit: — To the Honorable Judge of the Chancery District directed by Law to be held at the former Capital in the City of Williamsburg —

Bill

Humblly complaining shew unto your Honor your Orators Alexander Wilson and Robert Maitland. That James Herbert now deceased formerly of the County of Norfolk under the will of Henry Herbert his father executed in the year of our Lord 1777 became entitled among other property to a certain piece of land lying between the draw bridges near the Borough of Norfolk and containing acres or thereabouts, and some time in the year made sale thereof to Robert Burley in consideration of the sum of to be paid to Herbert; that Burley under this agreement was put by Herbert into possession of the land and resided thereon many years during Herbert's life and paid part or the whole of the purchase money to Herbert; that after Herbert's death Burley continued in possession of the said land for years and afterwards sold it to William Pennick about the year 1794 or 1795 and delivered to him the possession of the said land. That William Pennick retained the possession and use of the said land during years under the purchase from Burley and afterwards executed a deed (a copy of which is herewith filed and prayed to be taken as part of this bill) by which

he conveyed and assigned the whole of his property real and personal (therein
 including the aforesaid land) in trust to Alexander Wilson, Robert Mar-
 tland and Theodorick Armistead, the executor or executors of them for cer-
 tain purposes therein expressed. That under this and the said trustees off-
 ered the said land to the highest bidder at public sale on the day of
 when it was purchased by one John Hodges at the price
 of fifteen hundred dollars, and he was accordingly put in possession there-
 of by the said trustees and has cultivated and received the profits of the same
 from that time until the present day. Theodorick Armistead has since died.
 Your Orators further represent that no deed of conveyance for the said land
 of Herbert to Burley can now be found. That William Pennock after the
 purchase of the said land from Burley paid to Mrs. Diana Herbert the
 widow and administratrix of James Herbert the sum of \$53.10/ either as
 the balance claimed from Burley for the purchase of the aforesaid land by
 her as administratrix of the said James Herbert, or as a consideration
 to her for the relinquishment of her dower in the said land. That Wil-
 liam Pennock also paid to Burley the sum of \$100 as a full satisfac-
 tion and consideration for his interest and title in and to the said
 land, as will appear by a copy of Pennock's and Burley's receipt thereon,
 herewith filed and prayed to be taken as part of this Bill. That Herbert
 at the time of his death left three children, Nathaniel, now of age be-
 lieved to be lost at Sea, Christopher of age, now dead and Nancy now
 the wife of James Davis: That William Pennock under whose deed your
 Orators sold the land to Hodges having paid and discharged all proper
 and just claims against the said lands and having become thereunto
 entitled to a full and complete assurance and conveyance of the same
 applied to the widow and heirs of the said James Herbert to execute
 a deed to him and your Orators have applied to the same persons to
 execute a deed to Hodges: That the widow and
 one of the heirs of the said James were at all times willing to concur with
 the said James Davis and Nancy his wife in the execution of the deed.
 But now so it is may it please your Honors, that the said James
 Davis and Nancy his wife whom your Orators pray to have made spe-
 cial respondents to this Bill, with apt and proper words to charge them
 refuse to join with the said Diana Herbert widow and administratrix
 aforesaid in any conveyance or assurance of the said land to William
 Pennock or to John Hodges claiming under the sale of Pennock's as-
 signor. And the said John Hodges whom your Orators pray to have
 made a party respondent to this Bill has refused and still refuses to
 pay to your Orators the sum agreed by him to be paid as a consid-
 -eration

for the said land, until the title to the same be fully & completely secured to him by a deed duly executed by the proper parties.

In tender consideration whereof and as your Orators are without relief in the premises, except through the aid of a Court of Equity to the end therefore that the said John Hodges, James Davis and Nancy his wife may on oath answer all the allegations of this Bill as if the same were here again set forth and repeated, and particularly that they may say whether or not they know and believe the said Robt. Burling and William Pennock have not fully and completely paid to the said James Herbert during his life or to his widow and administratrix since his death the whole amount or consideration for which the said land was sold by the said Herbert to the said Burling and that the said James Davis and Nancy his wife may be required and compelled to join with the said Widow and administratrix in the execution of a full and complete assurance and conveyance of the said land to the said John Hodges. And that the said Hodges may be required to pay to your Orators the sum of fifteen hundred dollars (offered by him at the public sale aforesaid as the consideration money for the said land) with interest thereon from the day of sale until paid: and that your Orators may have such other relief as consists with Equity, may it please the Court to grant a Subpoena.

Taylor per

Exhibits filed with Bill

Exhibits
filed with
Bill

I promise to pay Robert Burling or order on demand one hundred pounds value received in a piece of land he purchased of James Herbert.

Wm. Pennock

Received Sept 26th 1798 from Mr. Wm. Pennock one hundred pounds the amount of the within note.

Teste

Sam^l Taylor pr

Robert ^{his} + Burling
marks

Ans. of
Jas Davis

The separate answer of James Davis and Nancy his wife to the bill of complaint of Alexander Wilson and Robert Mailland exhibited before the Honorable John W. Green Judge of the Superior Court of Chancery for the District of Williamsburg, against these respondents and others.

These Respondents, now and at all times hereafter saving and reserving to themselves all and all manner of benefit of exception to the said Bill of complaint and to all such errors, uncertainties, misstatements and imperfections as may be contained therein, in answer thereto, or to so much thereof, as they are advised it is material for them to answer, answering say: That it is true that James Herbert deceased the father of your

respondent *Money*, means entitled as is charged in the Bill of the complainants to the land therein mentioned; but is not true as far as they know and believe, and they therefore wholly deny that the said tract of land was ever sold by the said James Herbert to Robert Burley or to any other person; or that any agreement or contract whatsoever for the sale thereof was ever made or entered into by him - It is not true as far as they know and believe, and they therefore wholly deny, that the said Burley was ever put in possession of the land aforesaid; under or by virtue of any agreement or contract for the sale thereof; or that any sum of money whatever was, at any time, paid by the said Burley or received by the said Herbert in consideration of such a sale - Of the transaction which may have taken place between the complainants and Pinnoch, and between Pinnoch and Burley, your Respondents know nothing, and they are personally equally ignorant of the result of any applications alleged to have been made for a deed for the land aforesaid to any other persons than themselves - But your respondents do not believe, and they therefore deny that either the widow of the said James Herbert or any of his heirs has ever consented to give in a conveyance of the same; and as to themselves they have always distinctly refused to do so -

On the contrary your Respondents aver that in the month of September 1815 a writ of right was issued out of the Superior Court of law for the County of Norfolk, in which the widow and all the heirs of James Herbert deceased were demandants and John Hodge one of the defendants in this cause nominally, but actually the real plaintiff therein was Tenant; and at the first term of the said Court for the year 1820 a verdict was rendered in favour of the demandants, subject to the opinion of the Court on a demurrer to evidence, filed by the said Tenant - That at the succeeding term of the said Court the said demurrer was overruled, and judgment entered against the Tenant, from which judgment the Tenant prayed an appeal which is still pending before the Court of Appeals - All which will more fully appear on reference to the record of the proceedings in the said writ of right an office copy whereof is herewith filed and prayed to be received as part of this answer -

Your Respondents have heard but do not admit without proof that the said Burley did occupy the houses and lands mentioned in the Complainants Bill for about two years before the death of the said James Herbert, and that he continued in possession untill 1795, when Pinnoch under whom the present Complainants claim, acquired possession - Your Respondents as far as they are informed, do not believe that Elizabeth Herbert the widow of the aforesaid James Herbert ever did receive from

William Pennock the sum of £53.10 avallged in the Bill of the Complainants, either as the balance due from Burley for the pretended purchase of the aforesaid land, or in consideration of her relinquishment of claim therein. Your respondents are not advised that this circumstance even if it were true, could be material as against them, but as they do not believe the same to be true, they humbly hope that strict proof may be required thereof, if it be possible that their interest can in any way be affected thereby. And these respondents by protestation not confessing all or any of the matters and things in the Complainants Bill asserted, in manner and form as they are therein charged, do respectfully represent that the end of the Bill of the said Complainants is to compel these Respondents to perform an agreement thereby suggested to have been made by the said James Herbert the ancestor of these Respondents, with Robert Burley under whom the said Complainants claim, for the sale of the fee Simple in the land in the said Bill mentioned; and as to any relief by the said Bill prayed touching such pretended agreement, your respondents aver that neither the said James Herbert nor any person by him lawfully authorized did ever make or sign any contract or agreement in writing whatever for the sale of the land aforesaid or of any part thereof, or to any such effect as by the said Bill is suggested or any memorandum or note in writing of any agreement whatever for or concerning the sale of the said land, or of any part thereof. And they therefore humbly claim the benefit of the act concerning fraud and perjuries in such cases by the General Assembly of this Commonwealth made and provided. In consideration of which said matters and things, these Respondents humbly hope to be hence discharged with their costs in this behalf most wrongfully and unjustly sustained without that, that &c.

Corporation of Norfolk to wit: —

Sae. Davis and Nancy his wife appeared

before me John E. Holt an alderman of the

said Corporation and made oath that the foregoing answer is true, so far as the statements therein depend on their own knowledge, and so far as they are derived from the information of others they believe them to be true. — Given under my hand and Seal this 4th July 1822.

Sae. Davis (Seal)

Ann Davis (Seal)

Exhibit filed with the ans. of Davis & wife

John E. Holt Mayor (Seal)

Exhibit filed with ans. of Davis & wife

Plea at the Court house of Norfolk County before the Honorable Richard E. Parker one of the Judges of the General Court, assigned as Judge of the second Judicial Circuit and of the Superior Court of said County of Norfolk on the 20th day of October in the year of our Lord one

thousand eight hundred and twenty in the 4th Year of the commonwealth.
 Be it remembered that heretofore, to wit: the 27th day of September 1815 came
 issued out of the said Court a writ of Right, which with the return thereon
 is in these words. The Commonwealth of Virginia to the Citizens of Nor-
 folk County Greeting: Command John Dodge (near the foot of the draw
 bridge) that he quietly and without delay render unto Dinah Herbert, James
 Davis and Ann his wife formerly Ann Herbert and Nathl. Herbert one
 tenement containing three hundred acres of land more or less with the
 appertinances in the County of Norfolk which they claim to be their right
 and whereof they complain that the afore-said John Dodge doth hold the posses-
 sion and unless he shall do so then summon the said John Dodge that
 he appear before the Judge of our Superior Court of law at the next Court di-
 rected by law to be holden at the Court house of the said County, to which wh-
 erefore he hath not come it. And have then there this Writ Witness William
 Wilson clerk of our said Court at the Court house the 27th day of Sept-
 1815 in the 4th Year of the Commonwealth.

Returning Executed Andrew Hild Co. ~

Wm. Wilson Jr.

And in the Clerk's Office of said Superior Court at August Rules 1816 came the
 demandant by Littleton M. Tazewell their Attorney and filed their count in these
 words. Norfolk County to wit: Dinah Herbert, James Davis and Ann his wife
 formerly Ann Herbert and Nathaniel Herbert by Littleton M. Tazewell
 their attorney demand against John Dodge one tenement containing three
 hundred acres of land with the appertinances in the County of Norfolk
 and bounded by

and whereupon they the said Dinah Herbert, James Davis and Ann his
 wife formerly Ann Herbert and Nathaniel Herbert say that they have right
 to have the tenement afore-said with the appertinances and offer proof that
 such is their right.

Tazewell J. J.

And at a Superior Court held for the said County of Norfolk the 10th July
 1818 (till which time the cause remained undetermined and was continued
 by virtue of the act of the General Assembly in that case made and provided
 On the motion of the plaintiffs by their Attorney it is ordered that the
 surveyor of this County go upon the land in controversy and survey and lay
 out the same as either party shall require and return three fair plats and
 reports thereof to the Court. And the Sheriff of the said County is to attend
 the said survey and remove force if any should be offered.

And at a Superior Court held for the said County of Norfolk the 6th day of
 June 1820 till which time this cause was continued: came the parties
 by their Attorneys and a Jury to wit: William Rudder, John Accunelly, John
 Collins, William Latimer, John S. Stout, Nathan S. Angel, James B.

Butts

Mathan S. Forbes, George M. Bayne, Peter Brunetti, Richard Owens
and William G. Driver who being sworn the truth to say whether John Hodges
hath more right to hold the Tenement which the p^lts. demand against him
by their writ of right, or the p^lts. to have as they demand. upon their oath
returned a verdict in the words and figures following: 'We of the Jury
find that the said Demandants have better right to have the tract of
land and Tenement in their Count mentioned with its appurtenances -
than the defendant hath to hold the same and therefore we find for the
said Demandants subject to the opinion of the court upon the demon-
stration to evidence filed in this cause which is in the words and figures follow-
ing - At the trial of this cause before the Jury the demandants proved that Henry
Hodges in the year 1778 was in possession of a tract of land of which that
now demanded in this suit is a part, that he made a Will in the words
and figures following - In the name of God Amen. the 29th day of June
Anno Domini 1777. I Henry Herbert Lew of the County of Norfolk, being in
an imperfect state of health of body, but of sound mind and memory (Blessed
God) calling to mind the mortality of my body, do think it necessary to make
this my last will and Testament: And first I give and recommend unto the
hands and powerful protection of Almighty God my body I recommend to
the earth to be decently buried my worldly estate I give and dispose of in the
following manner: I give and bequeath unto my loving wife
Abigail the use of all my lands with all the appurtenances thereunto belong-
ing during her natural life except such lands as I may mention hereafter
to be sold and a small room up stairs in my dwelling house over the
little room, the use of which I give to my daughter Abigail as long as she
remains unmarried. But I do not give liberty to my wife to sell any wood
or timber off the land but only to make use of such as may be necessary
for plantation uses, such as wood, rail timber and buildings or repairing
on the said lands for her own use or convenience, I also give the use of
the following slaves to my said loving wife during her natural life that is
to say, Tom, Tommy, Sharper, George, Isaac, Sam, November, Mary, Jack
Solomon, Joe and Venus. But I do give and bequeath unto my said loving
wife and to her own disposal forever my slaves called etc Hannah & Alice
with all their future increase to my said loving wife and her heirs forever. I
also give unto my said loving wife all my silver plate and all the hard ready
money that I have now in the house by me, amounting to about forty pounds.
I give the said plate and money to her and her heirs forever: Item the lands and
slaves which I have given my wife the use of during her life I shall in differ-
ent parts of my will give amongst my loving children, but it is not to
be understood in any sentence of of my will that they are to pass or go into

their papers
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bequeath
Lot No.
give unto
Branch

their possession or use until my wife decease, unless she herself thinks proper
 to give them the possession and use thereof in her life time. Item I give and bequeath
 unto my son Caleb my land and plantation wherein I now live with the
 appertinances containing by estimation one hundred and twenty five acres and
 lying on the North or North East side of the road that leads from Ferry
 Point to the Great Bridge, and on the East or South east of Potters Cove,
 I give the same to him and his heirs forever. I also give unto my said son
 Caleb during his natural life my land on Powder point bounded as follows,
 that is to say beginning at the river at the middle of Powder point creek
 and running up the middle of the said creek and so on the same course
 up to the Ferry point road, and then along the said road to Powder point road
 thence down the powder point road to the river. I give the same with the appur-
 tenances to him during his natural life, and at his death I give the same
 to his son James and his heirs forever, and my will is that in consideration
 of the land and houses at powder point given to my son Caleb he shall pay
 the sum of fifty pounds current money to be equally divided amongst my other
 children, that are now living, to each an equal share. I also give unto my
 said son Caleb the following slaves; that is to say, Tom, Lemmer and wench
 Venus and Girl Rose with their future increase. I give the same to him
 and his heirs forever. Item I give and bequeath unto my son Jonas one lot
 of land at Ferry point; Lot No. 2. also my negro slave called Sharper and
 one feather bed and furniture; I give the same to him and his heirs forever.
 I also give to my said son Jonas all the balance and debts that may appear
 to be due from him to me. Item I give and bequeath to my son James the
 middle division or part of my land that lies to the South or South eastward
 of Ferry point road called Poplar Neck and bounded as follows. Beginning
 at a large Sapling pine near the head of a cove to the North eastward of stump
 point, and running thence N. 28 E. to Ferry point road thence up the road
 to the South eastward to Peter Sparrows hath thence South 53. West to a
 marked myrtle to the East or North eastward of stump point near the head
 of a cove and from the said myrtle and Sapling pine near the head of the
 different cove the bounds or line run down the middle of said cove
 and creek to the main river or Southern Branch; I give the same to him
 and his heirs forever I also give my said son James one negro called Rose-
 mber, one feather bed and furniture, six mahogany chairs with hair bottoms,
 one mahogany arm chair and all the scantling I saved to build him a
 house; I give the same to him and his heirs forever. Item I give and
 bequeath unto my son Angel two lots of land at Ferry point, that is to say
 Lot No. 1. and No. 3. I give the same to him and his heirs forever. I also
 give unto my said son Angel my land and plantation up the Southern
 Branch called Popkettle; I also give him my negro slaves called Cesar and

I give and bequeath unto my son Henry the Brigg Point division
 or part of my land that lies to the Southeastward of Ferry Point road bound
 on by the Southern Branch or river and the middle of Powder point creek
 and Ferry Point road and my son James part or division of the said land
 I give the same to him and his heirs forever; I also give to my said son
 Henry the following slaves; that is to say, Dany, girl, Sue and her
 future increase and also Sarah, also one feather bed and furniture; I
 give the same to him and his heirs forever. Item I give and bequeath
 unto my son Jonathan all my land calling Rappahannock point, beginning at
 William Herberts garden and running thence up the North East side of Liberty
 street or the road to a gum stump near the head of Bottom Cove thence down
 the middle of the said cove to the river or Eastern Branch, and then down
 along the River to William Herberts land again, and so bounded by William
 Herberts land to the beginning; I give the whole of the land as above bounded
 unto my said son Jonathan and his heirs forever. I also give unto my said
 son Jonathan that part or division of my land that lies to the Southward
 of Ferry Point road, that is between the land that was Peter Sparrow and
 my son James part or division of the said land, I give the same to
 him and his heirs forever. I also give him the following slaves, Towick, Sam-
 uel called Dick and Solomon, also one feather bed and furniture. I give
 the same to him and his heirs forever. I give and bequeath unto my daugh-
 ter Lydia Nicholson one lot of land at Ferry Point Lot No. 5 and do
 desire that she may have the same at her own particular disposal. I
 give the same to her and her heirs forever. I also give my said daugh-
 ter Lydia one negro girl called Penelope with all her future increase,
 I give the same to her and her heirs forever. Item I give and bequeath
 unto my daughter Abigail one lot of land at Ferry Point Lot No. 7 I
 give the same to her and her heirs forever. I also give her my young
 negro wench calling Keller and her future increase and one negro boy called
 Anthony also one hundred pounds each to be paid to her out of my estate
 by my executors, on the day of her marriage or when she comes to the age
 of eighteen years, also one feather bed and furniture; I give the same to
 her and her heirs forever. Item Whereas my son Christopher deceased did
 in his will devise two negroes to wit: Jack and Joe to his two sisters
 Lydia and Abigail that is to say, Jack to my daughter Lydia and her
 heirs forever and Joe to my daughter Abigail and her heirs forever, I say
 and do hereby confirm the above devise and do give the said two negroes
 Jack and Joe unto my said two daughters Lydia Nicholson and Abigail
 in the manner above mentioned, to them and their heirs forever. I desire
 that

all that piece of my land that lies before William Herberts house down by the river and as far as to Liberty Street may be sold and that all the lots at Ferry point that are not already given away may be sold and also all the land at Ferry or Powder Point that is not already given away nor laid off in lots, may be laid off into lots and sold and all the money arising from the sale of the above land and said lots I give to be equally divided amongst my children that are now living, to each an equal part: Item I leave all my blacksmiths tools and utensils for the use of all my children in common but desire they may not be removed out of the shipyard but kept at the plantation where I now live - Item I give unto my loving wife the use of all my household and kitchen furniture, that is not already mentioned and given away; I say I give my said wife the use thereof during her natural life, I also give unto my said loving wife the use of all my stock of all kinds during her natural life - Item I desire that all my just debts may be paid, and that all the remainder of my ready money except the hard money which I have given to my loving wife may be equally divided amongst my children that are now living to each an equal part - Item I desire that all my out-standing debts that are due to me by bonds, book debts or any other way may be collected as soon as possible and the money equally divided amongst my children that are now living to each an equal share - Item I desire that all the estate that is given to my wife for life (except the slaves) may at her death be sold and the money arising from such sale to be equally divided amongst my children that shall be then a living to each an equal part, but desire that if any of my children should depart this life before that time and leave a child or children that the part of the said money that should have been the parent, shall descend and go to his or her child or children. Item I leave my gold chain pattern to my son Jonathan. Lastly I do constitute and appoint my loving sons Caleb Herbert, James Herbert and if the law will so permit, my loving son Jonathan Herbert to be my executors of this my last Will and Testament; and I do utterly revoke and disannul all and every other former will or wills by me in any ways writt or bequeathed: And I do ratify, allow and confirm this on both sides of these two papers that I joined together as far as my signing and sealing and no other to be my last Will and Testament: In Witness whereof I have hereunto set my hand and affixed my Seal the day and Year first before or above written -

Signed, sealed and declared by the said Henry Herbert to be his last Will and Testament in the presence of

Mathias Christian, Tho Williamson
Edm. Almond

Henry Herbert & Seal

Lastly and firmly my Will and desire is that this writing in favour of my daughter Lydia Nicholson be constituted as a part of my last Will and Testament. Item I give to my beloved daughter Lydia Nicholson one negro man named George to her and her heirs forever. my desire is that what I have here directed to be done by my executors may be performed and done accordingly by the survivor or survivors of them — In Witness I have hereunto set my hand and affixed my seal this 10th day of October one thousand seven hundred and seventy eight. Signed sealed and acknowledged in presence of 3 Henry ^{his} & Herbert Seal
marks

And afterwards did so possess in the Year 1778, that this Will was duly recorded and admitted to probate. That the land now demanded is the same which by the said Will is mentioned in the words and figures following — Item I give and bequest to my son James the middle division or part of my land that lies to the South or Southeastward of Ferry Point road called Poplar Creek and bounded as follows, beginning at a large Sapling pine near the head of a cove to the North eastward of Stump Point and running thence N 28° E to Ferry Point road thence up the road to the Southeastward to Peter Sparrows path thence South 53° West to a marking myrtle to the East or Northeastward of Stump Point near the head of a Cove and from the said Myrtle and Sapling pine near the heads of the different coves the bounds or line run down the middle of said coves and creeks to the main River or Southern Branch. I give the same to him and his heirs forever. That James Herbert after the death of his father the said Henry Herbert entered upon the land now in controversy cleared and built on it. that he did some time in the Year 1793 or 1794 The defendants also proved that James Herbert left a widow the demandant in this suit, Kinah and three children to wit: Ann the demandant now the wife of the demandant Davis, Christopher who died intestate after 90 after he attained 21 years of age said to be a married man and Nathaniel one of the original plaintiffs in the suit who went to sea during the last War between 1812 & 1814 being then of full age and has never been since heard off. Thereupon the defendant or Tenant proved that Robert Barclay was in possession of the land and lived thereon and occupied the houses and land for about two Years only before the death of James Herbert and with his knowledge. That Barclay continued in possession ever afterwards till the Year 1795 when William Pennack acquired the possession who held it till possession was given by him to Alexander Wilson, Robert Maitland and Theodorick Armstrong

who transferred possession to the present defendant, and that the said defendant has always since continued in possession, that James Herbert and no one claiming under him had been in possession of the said land since the year Burley acquired possession as before mentioned, which was all the evidence in the cause. And the said defendant or Tenant says that the aforesaid matters to the jurors aforesaid in form aforesaid shewn in evidence are not sufficient in law to maintain the issue joined on the part of the demandants, and that he the said defendant to the matters aforesaid shewn in evidence has no necessity nor is oblig'd by the law of the land to answer; wherefore for the want of sufficient matter, in that behalf shewn in evidence to the Jury aforesaid the said defendant prays judgment, and that the Jury aforesaid may be discharged from giving any verdict in the said issue, and that the said demandants may be precluded from having their said action against the said defendant. And the said demandants for that they hath shewn sufficient matter in maintenance of the said issue in evidence to the said Jurors which matter the said defendant does not deny nor in any manner answer thereto and prays judgment and his damages by reason of the premises to be adjudged to him. At the trial of this cause the defendant offered evidence to the Jury which was objected to by the Counsel of the p'ttffs. and the Counsel for the said defendant moved the Court to instruct the Jury that the evidence offered as aforesaid was admissible which instructions the Court refused to give. To which opinion or refusal of the Court the Counsel for the defendant moved his bill of exceptions in the following words and figures to wit: At the trial of this cause the demandants offered evidence shewing that Henry Herbert in the year 1775 was in possession of a tract of land of which that now demanded in this Suit is a part, that he made a Will in the words and figures following (see will copied in the demurrer) and afterwards died so possessed in the year 1778, that this Will was duly recorded and admitted to probate. That the land now demanded is the same which by the said Will is mentioned in the words and figures following (see the devise to James Herbert copied in the demurrer) that James Herbert after the death of his father the said Henry Herbert entered upon the land now in controversy, cleared and built on it that he died some time in the year 1793 or 1794 Robert Burley being then in possession of the land, and living thereon and occupying the houses and the land which he did for about two years only before the death of Jas. Herbert and with his knowledge; that Burley continued in possession from thence forward till the year 1795 when William Pennock acquired the possession who held it till possession was given by him to Alexander Wilson, Robert Maitland and Theodorick Arminstead who transferred possession to the present defendant and that the said defendant has always since continued in possession that James Herbert and no one claiming under him had been in possession

of the said Land since the year Burley acquired possession as before mentioned. The demandant also offered evidence to prove that James Herbert left a Widow the demandant in this Suit Dinah and three children to wit Ann the demandant now the wife of the demandant David, Christopher who died intestate after 90 after he attained 21 years of age, a married man, and Nathaniel one of the the Original plaintiffs in the Suit, who went to sea during the last War between 1812 & 1814 being then of full age and has never since been heard off. The Tenant offered to prove by evidence that this Land was sold by James Herbert in his life time to Robert Burley, that Burley took possession thereof and held the same claiming title, that the said Land was entered on the books of the Commissioners of the Land tax of the County of Norfolk where the land lays, in the name of Robert Burley and the Land tax charged to him and that it was not thereafter entered or the Taxes thereon paid by the said James Herbert in his life or by his Widow or Children since his death; that in the year 1795 the said Burley sold the Land to William Pennock who paid the purchase money to him and received possession of the Land; that after the said purchase by Pennock the plaintiff Dinah Herbert received a sum of money from the said defendant and gave her written receipt therefor for her dower right in the said Land, that the said Christopher and Nathaniel Herbert sons and heirs of James Herbert acknowledge that their father and ancestor had sold the said Land to Burley and that they had no title thereto; That Pennock for a valuable consideration sold and conveyed to Amos Dea, Wilson and Matland above mentioned and delivered possession thereof to them, and that they for a valuable consideration sold and delivered possession of the said Land to Hodges the Tenant; and that the possession has been held peaceably and without molestation by Burley and those claiming under him from, from the time Burley acquired possession as aforesaid. But no deed from James Herbert to Burley being produced the Counsel for the demandant objected to the proof of these facts, and the learned Judge for the defendant contended that such evidence ought to be allowed to go to the Jury with instructions that they were proper to be considered by the Jury who might judge thereon whether a deed had been executed and given for the said Land by James Herbert to Robert Burley, and if in their opinion the circumstances warranted them they were at liberty to presume that such deed was executed and given, though the deed itself was not produced to them. But the Court was of opinion that evidence offered by the deft. could not avail him at law, because it only went to establish an equitable title; that to allow the Jury to presume a deed from so short a possession on the part of the Tenant is well offered in evidence would be to enable parties to elude the provisions of the Act of conveyances and render that Act a nullity; that the doctrine of presumption

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had no application to a case where there was an express time of limitation to which the defendant might refer for his protection; and that if the demandants could be barred by any shorter time of adverse possession in the debt or those under whom he claimed than that mentioned in the Act for limiting the period for bringing Writs of Right (on this doctrine of presuming a deed from the circumstances offered to be proved) it would operate to the virtual repeal of this latter Act and render it also a nullity; for these and other reasons the court refused to receive the evidence offered for the purpose avowed by the defendants counsel; and refused to instruct the Jury, that from such circumstances they were at liberty to presume a deed but did receive evidence of the possession of Burley and of that possession being transferred to Pennock who transferred it to Wilson, Maillaud & Cornish and who transferred it to the present debt, as is stated in the demurrer to evidence filed in this cause. To which opinion and decision of the court refusing to allow the Tenant to prove these facts or any of them before the Jury except as aforesaid the defendant by his counsel excepted and tendered this bill of exceptions and prayed that the same might be signed and sealed which was done accordingly.

Richard C. Parker *Seal*
Clerk

And at another day to wit. At a Superior Court of Law held for Norfolk County the 25th day of October 1820. This day came the parties by their Attornies and by their consent the pleadings in the cause were amended by substituting the count, plea and replication now filed in the words & figures following, Norfolk County to wit: Dinah Herbert, James Davis and Ann his wife formerly Ann Herbert and Nathaniel Herbert by Littleton Waller Targwell Their Attorney demand against John Dodge and Perment or tract of land containing forty acres with its appurtenances situated in the County of Norfolk and bounded as followeth: Beginning where a large sapling pine once stood near the head of a cove making out of the Southern Branch of Albemarle River to the Northeastward of Stump Point and running thence North 28° East to the ferry Point road, thence up the said road to the Southeastward to was once called Peter Sparrows path thence South 53° West to what was once a marked myrtle to the East or North-eastward of Stump Point near the head of another cove making out of the said Southern Branch and from the place where the said Sapling, pine and myrtle once stood respectively near the head of the said two several coves down the middle of the said two coves respectively and of the creek from whence the said coves flowed to the main river or Southern Branch aforesaid and so along the said Southern Branch or main river from the middle of one of the said creeks to the middle of the other. And whereupon they the said Dinah Herbert, James Davis and Ann his wife formerly Ann Herbert and Nathaniel Herbert say that they have right to have the

the Tenement or tract of land aforesaid with its appurtenances and appoynt
 that such is their right. Tagewell per
 and the aforesaid John Hodge by Robert B. Taylor his attorney, counsell and
 defendeth the right of the said John Hodge when and where it behooveth him
 and all that concerneth it and what ever he ought to defend and chiefly the
 Tenement and tract of land aforesaid with its appurtenances as of right
 namely one Tenement or tract of land situated in the County of Norfolk
 bounded as in the said Count is set forth and putteth himself upon the
 spling and sprageth recognition to be made whether he hath greater right
 to hold the Tenement and tract of land aforesaid with its appurtenances as
 he now holdeth it or the said Dinah Herbert James Davis and Ann his
 wife and Nathaniel Herbert to have it, as they now demand it. And the
 aforesaid Dinah Herbert James Davis and Ann his wife formerly Ann
 Herbert and Nathaniel Herbert putteth themselves upon the spling and bring
 recognition to be made whether they have greater right to have the Tenement
 and tract of land aforesaid as they demand or the said John Hodge
 as he holdeth it. In the lieu of the former pleadings filed and by the
 like consent the suit is directed to stand now abated as to the demand
 of Nathaniel Herbert as though the said abatement had been entered
 at the last term. And thereupon the Tenant demurreth to the demandants
 verdict in this cause being argued the same is overruled. Therefore
 it is considered by the Court that the said demandants recover against
 the said Tenant their seizen of the Wares of Land with its appurtenances
 in the said Count mentioned to hold to them and their heirs quit of
 the said Tenant and their heirs forever, and that the said demandants
 recover against the said Tenant their costs in this behalf expended. Where
 upon the demandants pray the writ of the commonwealth to cause them
 to have their seizen aforesaid and to them it is granted returnable here
 &c. From which opinion and judgment of the Court the Tenants by
 their counsel prayed an appeal to the Court of Appeals which is granted
 them upon their giving bond and security as the law directs in the
 penalty of one hundred dollars. And by counsel of the demandants
 thirty days are allowed the said Tenant to give such bond and security.

Copies sent

Wm Wilson Secy

Answer of
 D. Herbert.

The answer of Dinah Herbert to the bill of complaint of Alexander Wilson
 and Robert Maistling exhibited before the Honorable John M. Green, Judge of
 the Superior Court of Chancery for the District of Williamsburg against this
 respondent and others. This respondent read and at all

Suppl^e Bill