

162-71 758

Record No. 1353

ROBERT A. KEAS, Plaintiff in Error,

V.

**MARY HOLLAND, AND OTHERS,
Defendants in Error.**

FROM THE CIRCUIT COURT OF THE COUNTY OF ACCOMACK.

“The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements.”

The foregoing is printed in small pica type for the information of counsel.

H. STEWART JONES, Clerk.

162 Va 71

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

ROBERT A. KEAS, Plaintiff in Error,

vs.

MARY HOLLAND, JOHN H. WATSON, WILLIAM L.
WATSON, GROVER C. WATSON, JESSE R. WAT-
SON, EARL WATSON, AND EMMA BEEBE,
HEIRS AT LAW OF JESSE R. WAT-
SON, DECEASED, Defendants in
Error.

In Ejectment.

*To the Honorable Justices of the Supreme Court of Appeals
of Virginia:*

Your petitioner, Robert A. Keas, respectfully represents that he is aggrieved by a final judgment entered by the Circuit Court of Accomack County, Virginia, on the 18th day of June, 1932, in a certain action of ejectment pending in said Circuit Court wherein your petitioner, Robert A. Keas, was defendant, and Mary Holland, John H. Watson, William L. Watson, Grover C. Watson, Jesse R. Watson, Earl Watson, and Emma Beebe, children and heirs at law of Jesse R. Watson, deceased, were plaintiffs; said judgment being in favor of said plaintiffs for the real estate described in plaintiffs' declaration.

A transcript of the record of said suit is herewith presented along with a certain plat marked "Exhibit C", a certain blueprint marked "Exhibit H", a certain plat marked "Exhibit Y", and a certain survey made by one J. Caulk, Surveyor, marked "Exhibit I", and a certain typographical plat marked "Exhibit J", respectively, as a part of this petition,

from which the errors complained of may be seen. Said Exhibits Y and C are filed with record in a similar ejectment suit brought by the same defendants in error against James T. Powell, plaintiff in error, designated "In Ejectment No. 1", in which last referred to suit a writ of error has recently been granted by the Supreme Court of Appeals of Virginia.

From the final judgment entered as aforesaid in this suit on June 18, 1932, your petitioner likewise prays a writ of error and *supersedeas*.

STATEMENT OF FACTS.

On April 12, 1858, William T. Watson, grandfather of the defendants in error, who for the sake of convenience, will hereinafter be referred to according to their position in the trial Court, as plaintiffs, your petitioner being hereinafter referred to as defendant, executed his will, which is found on pages 14 and 15, M. R. This will was duly probated in the Clerk's Office of the Circuit Court for the County of Accomack on the 4th day of May, 1858. As the main issue presented by this petition for a writ of error and *supersedeas* involves a proper construction of this will, the Court's attention is respectfully directed thereto, especially to Items 1, 2 and 5 (M. R., 14). As will be seen in Item 1, the testator gave to his son, Jesse R. Watson, father of plaintiffs, certain real estate on Chincoteague Island, in the County of Accomack, "to hold during his natural life, and at his death, to his lawful heirs". In Item 5, testator provided for his wife, Elizabeth Watson as follows:

"I leave my wife, Elizabeth Watson, to be supported out of my property equally with my children until they arrive at age, and then one-third to be set off as her dower so long as she lives, provided she remains my widow—but if she should marry, it is my desire that all of my property shall be given to my children." (Italics added.)

Less than a month after the execution of this will, testator died, being survived by his son, Jesse R. Watson, father as aforesaid of plaintiffs, and by a daughter, Emily J. Watson, and by his widow, Elizabeth Watson. His infant son, George C. W. Watson, referred to in the first and second items of his will, died just a few hours before his father, William T. Watson. During the month following the death of said William T. Watson, to-wit: on June 19, 1859, Elizabeth T. Watson, widow, renounced the provision made for her in said

will, said renunciation being duly recorded in the Clerk's Office of the Circuit Court for the County of Accomack (M. R., 17.)

When the aforesaid will was executed and probated, Jesse R. Watson was an infant of tender years.

William T. Watson's widow, Elizabeth Watson, remarried some two or three years after the death of William T. Watson, said remarriage being to a man named John Thornton. (See evidence of Charles Turlington, M. R., 118, also evidence of Miss Nancy Jones, M. R., 123.)

Several years after the remarriage of Elizabeth Watson, Jesse R. Watson conveyed a certain tract, piece or parcel of land to one George R. Porter, said conveyance being *by deed with general warranty of title*, dated May 8, 1875. (M. R., 18.)

This lot or parcel of land was in turn conveyed by said Porter and wife to Josephine Whealton by deed dated November 1, 1877, *said conveyance being likewise with general warranty of title*. (M. R., 20 and 21.) Josephine Whealton in turn by deed dated November 1, 1883, reconveyed said real estate to said Porter and wife (M. R., 22). All of the aforesaid deeds were duly recorded in the Clerk's Office of the Circuit Court for the County of Accomack.

The next and last deed in the chain of title is that dated October 31, 1919, from the late Judge N. B. Westcott, who at that time was a practicing attorney, as Special Commissioner in the Chancery suit of Thomas S. Birch, as plaintiff against Joshua W. Birch and others, defendants, to your petitioner, which deed was likewise duly recorded in the Clerk's Office of the Circuit Court for the County of Accomack. (M. R., 23-26.) The aforesaid Chancery suit in which Judge Westcott was Special Commissioner involved the settlement of the estate of George K. Porter and wife.

It is the land described in the above referred to deeds which was and is now involved in this action of ejectment.

Jesse R. Watson, father of plaintiffs, died November 27, 1931. At the time of the death of the said Jesse R. Watson, and in fact ever since same was conveyed to him in October 1919, as aforesaid, your petitioner was, had been and still is in possession of the real estate in question. Not only has he been continuously in possession thereof, but since the purchase of same in 1919, he has rebuilt and remodeled same, and for many years has been and still is using it as his residence on Chincoteague Island, Virginia.

During the early part of 1932, the instant action of ejectment was instituted by the children of Jesse R. Watson, de-

ceased, against your petitioner. Same was tried at the June term of the Circuit Court for said County of Accomack, before a jury, which jury returned a verdict in favor of the plaintiffs and the final judgment herein complained of was entered by the Court in favor of the plaintiffs against your petitioner, on June 18, 1932. (M. R., 7-9.)

ASSIGNMENTS OF ERROR.

There were two main issues presented at the hereinbefore referred to trial in the Circuit Court, same being briefly stated as follows:

First. It was and is your petitioner's contention that the real estate referred to in the above set out chain of title was a part of that described in Item 2 of the will of William T. Watson, and by said William T. Watson devised to his son, George C. W. Watson. The uncontradicted and undisputed evidence shows that said infant son, George C. W. Watson, then only a few months old, died a few hours before his father, William T. Watson. (See evidence of Miss Nancy Jones, especially pages 123-127). If the land now in question was a part of that described in Item 2 and devised to George C. W. Watson, it, of course, follows that William T. Watson died intestate as to the same, and that Jesse R. Watson as one of the only two surviving children of William T. Watson, heired an undivided one-half therein. It follows too that said Jesse R. Watson, having in his lifetime conveyed said land by deed with general warranty of title, your petitioner, as ultimate grantee, did in any event have an undivided one-half fee simple interest therein. Fee simple title to the remaining one-half interest would be in the heirs of Emily J. Watson, and this action could, of course, not be maintained by these plaintiffs.

The second main issue before the Circuit Court was a legal question involving the proper construction of the will of William T. Watson, above referred to. *It is the contention of your petitioner that the Circuit Court erred in entering said final judgment because that upon the remarriage of Elizabeth Watson, widow of William T. Watson, the estate of Jesse R. Watson in and to all of the land devised him by his father, William T. Watson, immediately became a fee simple estate.*

Your petitioner respectfully alleges that he believes now as he has always believed, that the land now in dispute is a part of that embraced in Item 2 of the will of William T. Watson,

and believes that the clear preponderance of the evidence supported this contention. Realizing, however, that there was conflict in the evidence as to the boundaries of the land devised by William T. Watson in Item 1, to his son, Jesse R. Watson, and that devised in Item 2 to his son, George C. W. Watson, your petitioner, without waiving said assignment of error, simply directs the Court's attention thereto.

The real question presented by this record is whether or not, under the will of William T. Watson (found as aforesaid M. R., 14-15) his son, Jesse R. Watson was devised a fee simple or life estate. In granting, over your petitioner's objection and exception, plaintiffs' instruction No. 1 (M. R., 153-155) and refusing your petitioner's instruction E, shown at the bottom of page 162 and the top of page 163, M. R., to which action of the Court, your petitioner likewise excepted, and in refusing to set aside the verdict, returned by the jury, which motion was based upon the usual grounds and upon this specific ground (M. R., 157), to which action of the Court, your petitioner again excepted, the Circuit Court necessarily held that Jesse R. Watson was devised by his deceased father only a life estate, and that said life estate was not enlarged into a fee simple estate upon the remarriage of Elizabeth Watson, widow of testator. In this connection, we desire to call the Court's attention to an error of the stenographer in making up the records, disclosed on page 156 thereof, where it would appear that the Court granted an instruction asked for in behalf of your petitioner to the effect that if the jury believed from the evidence that the widow of William Watson, deceased, remarried, after the death of the said William Watson, it was the duty of the jury to find for the defendant. This instruction was asked for but refused as is shown (M. R., 162-163). The granting of this instruction would, of course, be conclusive of the case as the uncontradicted evidence was that said widow did remarry. Your petitioner respectfully alleges that in so holding, the Circuit Court plainly erred to the great prejudice of your petitioner.

This question was discussed at considerable length in the petition for a writ of error and *supersedeas* in the case of James T. Powell, plaintiff in error, *vs.* these same defendants, designated as "In Ejectment No. 1", and likewise in a similar case in favor of said James T. Powell as plaintiff in error, *vs.* the same defendants in error, designated, "In Ejectment No. 2". *Writs of error have been granted in both of these companion cases.*

To summarize what was stated in the above referred to

Powell cases, we respectfully submit that a fair reading of he will as a whole will irresistably lead to the conclusion that it was the intent of William T. Watson to give to Jesse R. Watson and his other children only a life estate in the real estate devised them *provided his widow, Elizabeth Watson, did not remarry. It is equally clear that it was the intent of the testator to give to said children a fee simple estate provided his said widow did remarry.* Not only do we necessarily arrive at this conclusion from reading the will as a whole, but the testator expressly states therein in Item 5 thereof, that being the provision of said will which provides for his widow, “* * * *but if she should marry, it is my intention that all of my property shall be given to my children*”. (Italics added.) In other words, the testator himself has fixed this by the plain language of his will beyond any question or doubt. Testator's widow, Elizabeth Watson, remarried some two or three years after her husband died, and according to the clear cut express provision of said will, Jesse R. Watson's estate in the real estate devised him was thereby merged into a fee simple estate.

Even if there was a conflict between Item 1 and Item 5, under the rule laid down in numerous Virginia cases, Item 5 being the subsequent provision would prevail.

See *Waring vs. Boshier*, 91 Virginia 286.

See *Price vs. Cole*, 83 Virginia 343.

See *Hopkins vs. Graff*, 101 Virginia 377.

In *Williams vs. Bond*, 120 Virginia 678, this Court held that the interpretation placed upon the will by the executors, was entitled to great consideration. In the instant case, we find Jesse R. Watson conveying by various deeds, *with general warranty of title, after the remarriage of his mother*, the real estate devised to him by his deceased father. We believe that the construction placed by Jesse R. Watson upon his father's will a comparatively few years after his father's death, and after the remarriage of his mother, is entitled to peculiar weight.

In addition to this, we find that this very real estate was conveyed to your petitioner by a Special Commissioner duly appointed by the Circuit Court of the County of Accomack. The Special Commissioner referred to was the late Judge N. B. Westcott. We further find that in the Chancery suit in which Judge Westcott was acting as Special Commissioner, *which Chancery suit involved title to this very land now in dispute.*

there was the usual decree of reference to a Commissioner in Chancery of said Court. The Commissioner in Chancery to whom same was referred was the late Judge Samuel T. Ross. The first reference in said decree to Judge Ross as Commissioner in Chancery was *to determine the title* of the parties in interest to the real estate now in question (M. R., 99) by reference to the report of said Commissioner in Chancery. (M. R., 101.) We find in Item 2 of said report, the following: "The title of the said parties to the said real estate is fee simple." Acting on this report, the late Judge James H. Fletcher, appointed Judge Wescott, who was then a practicing attorney, as Special Commissioner, and directed him to make sale at public auction of said property. Said sale was duly advertised. William Watson, one of the plaintiffs in this action of ejectment, while not a party to said suit, admitted on cross examination that he was on Chincoteague Island and he knew when sale was to be made. (M. R., 83.) Your petitioner testified as is shown both on direct and cross examination, that Judge Wescott, the Special Commissioner from whom he bought, "told me that that deed was as good as could be given". (M. R., 87-91.) Not only did Judge Wescott give to your petitioner a deed for said real estate, but in addition, he gave him a plat of said real estate made by a Mr. Caulk, a Surveyor, who formerly lived on Chincoteague Island (M. R., 86). This plat is presented along with this petition, designated as "Exhibit I", *and is dated May 7, 1875.*

It is true that after the above referred to chancery record was introduced, the Circuit Court, on motion of counsel for plaintiffs, excluded from the jury all of said chancery record except so much of the bill in chancery as described the plat referred to of J. Caulk, Surveyor. The exception of your petitioner to the exclusion of any part of this record, and the grounds therefor are shown (M. R., 151-152). It is respectfully submitted that under Rule 8 of this Court, the entire record is properly before the Court.

In conclusion, we respectfully submit, first, that the verdict of the jury as to the location of the and in dispute was plainly wrong, and if wrong, this action could not be maintained in whole or part by plaintiffs; and, second, that the Circuit Court plainly erred in not holding that under the will of William T. Watson, his two surviving children, after the remarriage of his widow, took a fee simple estate in the real estate devised to said children.

For the reasons above stated, your petitioner respectfully submits that the Circuit Court of the County of Accomack plainly erred in entering the final judgment complained of,

and likewise erred in not entering final judgment in behalf of your petitioner.

It is, therefore, respectfully asked that a writ of error and *supersedeas* be granted to the final judgment entered by the Circuit court of the County of Accomack in this case; that said judgment be reversed, and that final judgment be entered by this Honorable Court in behalf of your petitioner, or that this case be remanded to the Circuit Court of the County of Accomack. Your petitioner prays that this petitioner prays that this petition may be considered as his brief, with the right to file an additional brief should his counsel so desire.

Your petitioner respectfully states to the Court that a copy of this petition has been delivered to Benjamin T. Gunter, one of the Attorneys for all of the plaintiffs, who tried this case in behalf of all of said plaintiffs in the Circuit Court for the County of Accomack, and that said copy was delivered to said Benjamin T. Gunter on this the 10th day of December, 1932.

Respectfully submitted this the 10th day of December, 1932.

ROBERT A. KEAS,
By MAPP & MAPP & HERBERT BARNES,
His Counsel.

We, the undersigned attorneys, practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in our opinion it is proper that the decision and judgment referred to in the foregoing petition be reviewed by the Supreme Court of Appeals of Virginia.

Given under our hands this the 10th day of December, 1932.

G. WALTER MAPP,
J. BROOKS MAPP.

Received Dec. 12, 1932.

H. S. J.

Writ of error and *supersedeas* awarded. Bond \$500.00.
January 9, 1933.

(Exhibits filed in Clerk's office of the Supreme Court of Appeals of Virginia.)

VIRGINIA:

Pleas before the Circuit Court for the County of Accomack, on Saturday, the 18th day of June, in the year of our Lord, Nineteen Hundred and Thirty-two.

Be it remembered that heretofore, to-wit:

In the Clerk's Office of the Circuit Court for the County of Accomack, on the Third Monday in February, A. D., 1932, a Declaration in Ejectment, in which Mary Holland, John H. Watson, William L. Watson, Grover C. Watson, Jesse R. Watson, Earl Watson and Emma Beebe, heirs at law of Jesse R. Watson, deceased, are Plaintiffs, and Robert A. Keas is Defendant, was filed which Declaration is in the following words and figures, to-wit:

Virginia:

In the Circuit Court of Accomack County.

Mary Holland, John H. Watson, William L. Watson, Grover C. Watson, Jesse R. Watson, Earl Watson and Emma Beebe, heirs at law of Jesse R. Watson, deceased,
against
Robert A. Keas.

In Ejectment.

Mary Holland, John H. Watson, William L. Watson, Grover C. Watson, Jesse R. Watson, Earl Watson and Emma Beebe, heirs at law of Jesse R. Watson, deceased, complain of Robert A. Keas of a plea of trespass; for this, to-wit: That heretofore, to-wit, on the 28th day of November, A. D., 1931, the said plaintiffs were possessed of an estate in fee simple absolute of a certain tract or parcel of land, with the buildings and improvements thereon, situate, lying and being on Chincoteague Island, in the County of Accomack, Virginia, and bounded as follows, to-wit: North, by Mumford Street and the land of the heirs of Jesse R. Watson, deceased; South, by Cleveland Street; East and West, by the land of the heirs of Jesse R. Watson, deceased.

page 2 } And the said plaintiffs say that they being so
possessed of said tract or parcel of land, the said
defendant afterwards, towit, on the .. day of November A.
D., 1931, entered into the same, and that he withholds from

Supreme Court of Appeals of Virginia.

said plaintiffs the possession thereof, to the damage of said plaintiffs of \$8,250.00.

And therefore, they institute this action of ejectment.

MARY HOLLAND,
JOHN H. WATSON,
WILLIAM L. WATSON,
GROVER C. WATSON,
JESSE R. WATSON,
EARL WATSON,
EMMA BEEBE, Plaintiffs,
By GUNTER & GUNTER,
GEORGE L. DOUGHTY,
J. HARRY REW, p. q.

To Robert A. Keas:

You are hereby notified that the foregoing declaration in ejectment against you will be filed in the Clerk's Office of the Circuit Court of Accomack County, Virginia, on the first day of the rules to be holden for the said Court on the third Monday in February, next, to-wit, February 15, 1932.

Given under our hands this the 30th day, of January, A. D., 1932.

MARY HOLLAND,
JOHN H. WATSON,
WILLIAM L. WATSON,
GROVER C. WATSON,
JESSE R. WATSON,
EARL WATSON,
EMMA BEEBEE,
By GUNTER & GUNTER,
GEORGE L. DOUGHTY,
J. HARRY REW, p. q.

page 3 } RETURN OF SHERIFF.

Feby. 1st, 1932.

Executed the within writ by delivering a copy of the within writ to Robt. O. Keas the within named defendant, within my bailiwick.

E. P. PARKE, Sheriff,
By F. M. HODGE, Dy.

And at another day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Wednesday, the 27th day of April, in the year of our Lord, nineteen hundred and thirty-two.

Mary Holland et als.

vs.

Robert A. Keas.

In Ejectment.

On motion of the plaintiffs, by their attorneys, it is ordered that this cause be continued until the first day of the next term.

And at another day, to-wit

Virginia:

Circuit Court of the County of Accomack, on Thursday, the 16th day of June, in the year of our Lord, nineteen hundred and thirty-two.

Mary Holland, John H. Watson, William L. Watson, Grover C. Watson, Jesse R. Watson, Earl Watson and Emma Beebe, heirs at law of Jesse A. Watson, deceased, Pltffs.,
against
Robert A. Keas, Deft.

In Ejectment.

This day came the parties in their proper persons and by their attorneys. Thereupon, Mapp & Mapp and Herbert Barnes, attorneys for the defendant, filed their grounds of defense and additional grounds of defense, copies of same having been given to the attorneys for the plaintiffs page 4 } prior to this day. Whereupon, the defendant by his said Attorneys, filed a Plea of Statute of Limitations in writing and entered the plea of not guilty in manner and for as the plaintiffs against him in their Declaration have complained, and of these puts himself upon the country and the plaintiffs likewise. And thereupon, on motion of the plaintiffs, by their attorneys, concurred in by the defendant, by his attorneys, it was agreed and ordered that any assessment of damages and any allowance in this case to be made

be postponed until after the verdict on the title is recorded, which said agreement is filed with the papers in this cause. Whereupon, came a jury, to-wit: Thomas H. Melson, Thomas W. Melson, John C. Kelley, L. Floyd Nock, Jr., Wm. Frederick Milliner, Archie Mariner and Milton N. Custis, who were summoned, elected, tried and sworn, well and truly, to try the issue joined between the parties, and having fully hear the evidence but there not being sufficient time within which to complete the trial of this cause were adjourned until tomorrow morning at 10 o'clock.

GROUNDS OF DEFENSE FILED JUNE 16TH, 1932.

Virginia:

In the Circuit Court for the County of Accomack.

Mary Holland, et als.,

vs.

Robert A. Keas.

In Ejectment.

GROUNDS OF DEFENSE.

1. Under the will of William T. Watson, his son, Jesse R. Watson was devised a fee-simple estate in the real estate herein involved, conditioned upon the remarriage of Elizabeth Watson, widow of William T. Watson, which condition was fulfilled, thereby giving the said Jesse R. Watson a fee-simple estate rather than a life estate, which fee-simple estate in the land referred to in this suit is now owned by the page 5 } defendant.

2. The plaintiffs are guilty of such fraud and laches as bars the recovery in this suit.

3. The defendant is entitled to an allowance for improvements which had been made by said defendant upon the real estate sued for, said improvements having been made by defendant under a title believed by defendant to be good.

4. General issue and all defenses properly provable thereunder.

MAPP & MAPP & HERBERT BARNES, P. D.

ADDITIONAL GROUNDS OF DEFENSE FILED JUNE
16TH, 1932.

Virginia:

In the Circuit Court for the County of Accomack.

Mary Holland et als.

vs.

Robert A. Keas.

In Ejectment.

Additional Ground of Defense to Those Heretofore Filed.

William T. Watson, under Item 2nd of his will, probated in the Circuit Court of Accomack County, devised to his son, George C. W. Watson, "the Land from the Eastern boundary of the Land whereon I now live Westerly to the Eastern Edge of the Glade that lays to the Eastward of my Back lot Fence" for his life, etc.

The land embraced within this cause lies within the aforementioned boundaries.

The said George C. W. Watson died before the said William T. Watson and as to said tract the said William T. Watson died intestate and Jesse R. Watson, one of his two remaining children became the owner in fee simple of one-half interest in said tract, which he conveyed by deed page 6 } dated May 8, 1875, with general warranty of title, to George R. Porter, which tract, by subsequent conveyances, is now owned in fee simple by the Defendant herein.

MAPP & MAPP & HERBERT BARNES, P. D.

PLEA OF STATUTE OF LIMITATIONS FILED JUNE
16TH, 1932.

Virginia:

In the Circuit Court of Accomack County.

Mary Holland et als.

vs.

Robert A. Keas.

In Ejectment.

PLEA OF STATUTE OF LIMITATIONS.

The Defendant, by his Attorneys, comes and says that the supposed cause of action in the declaration in this action mentioned, is founded upon a claim to land lying east of the Allegheny Mountains and that said claim did not accrue to the said Plaintiffs at any time within fifteen years next before the commencement of this action in manner and form as the said Plaintiffs have complained against him. And this the said Defendant is ready to verify.

MAPP & MAPP & HERBERT BARNES, p. d.

And at another day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Friday, the 17th day of June, in the year of our Lord, nineteen hundred and thirty two.

Mary Holland, John H. Watson, William Watson, Grover C. Watson, Jesse R. Watson, Earl Watson and Emma Beebe, heirs at law of Jesse R. Watson, deceased, Pltffs.,
against
Robert A. Keas, Deft.

In Ejectment.

page 7 } This day came again the parties in their proper persons and by their attorneys. Whereupon, the Jury, sworn on yesterday for the trial of this cause, appeared according to their adjournment and having fully heard the arguments of counsel were sent out of Court to consult of their verdict, and after sometime returning into Court returned the following verdict: "We, the Jury, find for the plaintiffs for the land and premises in the Declaration specified to-wit: a certain tract or parcel of land with the buildings and improvements thereon situate lying and being on Chincoteague Island, In the County of Accomack, Virginia, and bounded as follows, to-wit: North by Mumford Street, and the land of the heirs of Jesse R. Watson, deceased; South by Cleveland Street; East and West by the land of the heirs of Jesse R. Watson, deceased". Ordered that this cause be continued until tomorrow morning at 10 o'clock.

And on this same day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Saturday, the 18th day of June, in the year of our Lord, nineteen hundred and thirty-two.

Mary Holland, John H. Watson, William Watson, Grover C. Watson, Jesse R. Watson, Earl Watson and Emma Beebe, heirs at law of Jesse R. Watson, deceased, Pltffs.,
against
Robert A. Keas, Deft.

In Ejectment.

This day came again the parties in their proper persons and by their attorneys. Thereupon, said defendant, by his said attorneys, moved the Court to set aside the verdict of the Jury rendered in this cause on the 17th day of June, 1932, and to enter final judgment in favor of said defendant or page 8 } to grant him a new trial on the following grounds:

Because said verdict is contrary to the law and evidence, and without evidence to support it; because of the admission of improper evidence and the exclusion of proper evidence; and because of the Court's failure to properly instruct the jury and because of misdirection of the jury by the Court, which motion being thereupon fully argued, the same is overruled, to which ruling of the Court, said defendant, by his said attorneys, excepted. Therefore, it is considered by the Court that the plaintiffs recover against the defendant the possession of the land and premises in the Declaration specified, to-wit: a certain tract or parcel of land with the buildings and improvements thereon situate, lying and being on Chincotague Island, in the County of Accomack, Virginia, and bounded as follows, to-wit: North by Mumford Street, and the land of the heirs of Jesse R. Watson, deceased; South by Cleveland Street; East and West by the land of the heirs of Jesse R. Watson, deceased, the land and premises by the Jurors in their verdict ascertained, and their costs by them about their suit in this behalf expended. And said defendant in mercy &c. And the said defendant, by his said attorneys, stating that he thinks himself aggrieved by the entering of the judgment aforesaid and is desirous of applying to the Supreme Court of Appeals of this State for a writ of error and *supersedeas* to the said judgment, it is ordered that the execution of the said judgment be suspended for a period of sixty days from the rising of this Court for such purpose, provided that the said defendant, or someone for him, shall enter into

bond before this Court or the Clerk thereof in his office in the penalty of Five Hundred Dollars (\$500.00), with page 9 } surety deemed sufficient by this Court, or its Clerk, made payable to the Commonwealth of Virginia and conditioned according to law.

MOTION TO SET ASIDE VERDICT FILED JUNE 17TH,
1932.

Mary Holland et als.

vs.

Robert A. Keas.

The defendant, Robert A. Keas moves the Court to set aside the verdict and to enter final judgment in favor of said defendant or to grant said defendant a new trial on the following grounds:

1. Because said verdict is contrary to the law and evidence, and without evidence to support it.

2. Because of the admission of improper evidence and the exclusion of proper evidence.

3. Because of the Court's failure to properly instruct the jury and because of misdirection of the jury by the Court.

MAPP & MAPP & HERBERT BARNES, p. d.

And on this same day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Saturday, the 18th day of June, in the year of our Lord, nineteen hundred and thirty two.

Mary Holland et als.

vs.

Robert A. Keas.

In Ejectment.

This day came the Defendant, Robert A. Keas, by counsel, in open court, and asks leave to file his petition for an allowance for improvements in the above styled action, page 10 } which leave is granted by the Court, and it is hereby ordered that said petition be, and the same hereby is, filed; and it is further ordered that this action be continued.

PETITION FOR ALLOWANCE FOR IMPROVEMENTS,
FILED JUNE 18TH, 1932.

Mary Holland et als.

vs.

Robert A. Keas.

In Ejectment.

To the Honorable John E. Nottingham, Judge of the Circuit
Court for the County of Accomack, Virginia:

The undersigned Robert A. Keas respectfully represents unto the Court that he was and is a defendant in the above ejectment proceeding and that a judgment in the said proceeding has been rendered against him for land, said judgment having been rendered on the day of June, 1932; that no assessment of damages has been made under Chapter 224, of the 1930 Code of Virginia; that the above judgment has not been executed; in consideration whereof the said Robert A. Keas, Defendant, presents this, his petition, to the Court, which rendered the aforesaid judgment and respectfully alleges that he and those under whom he claims, while holding the premises referred to in this action under a title believed by said defendant and by those under whom said defendant held to be good, has made permanent improvements on said premises, which improvements, in the nature of a dwelling and tenant house and other improvements are now on said premises, and are of the combined value of Four Thousand Dollars (\$4,000.00). In consideration whereof said defendant prays that he may be allowed for said improvements over and above the value of the use and occupation of the

land referred to in this action, and respectfully petitions the Court under and pursuant to Chapter 225, of the Code of Virginia, that the execution of the judgment in this action may be suspended and that a jury may be impaneled to assess the damages of the plaintiffs and the allowances to the said Defendant for such improvements.

The undersigned defendant respectfully alleges that in filing this petition he does not waive any exceptions heretofore entered by him in the above proceeding, nor his exception to the final judgment entered by the Court in said proceeding, expressly reserving the right to apply to the Supreme Court of Appeals of Virginia for a writ of error therefrom.

Respectfully submitted this the 18th day of June, 1932.

MAPP & MAPP & HERBERT BARNES, p. d.

page 12 } In the Circuit Court for the County of Accomack,
Virginia.

Mary Holland, et als., Plaintiffs,

vs.

Robert A. Keas, Defendant.

RECORD.

Stenographic report of the testimony and other incidents of the trial of the above entitled cause before Honorable John E. Nottingham, which trial began in the Circuit Court of Accomack County, Virginia, on June 16, 1932, and ended the same day.

Present: Messrs. Gunter & Gunter, George L. Doughty and J. Harry Rew, for the plaintiffs; Messrs. Mapp & Mapp and Herbert Barnes, for the defendant.

Mr. Gunter: Motion is made that the question of damages or improvements be postponed until the title to the property involved shall be passed upon.

Mr. J. Brooks Mapp: We concur in the above motion.

Mr. Gunter: We desire to move to reject the first and second grounds of defense for the reasons set out in this plea.

By the Court: After filing of the grounds of defense in the general issue by the defendant, the attorneys for the plaintiffs offer a special replication thereto. On motion of the defendant, by counsel, to reject the special replication, the same was rejected on the ground that the replication attempts to reply to the grounds of defense, which are not a part of the pleadings. The attorneys for the defendant state that the grounds of defense were furnished at the request of the attorneys for the plaintiffs.

Mr. Gunter: Our motion is to reject the first and second grounds of defense for reasons set up in this replication.

By the Court: That motion is overruled for the grounds of defense not being a part of the pleadings and the special replication being rejected. Those grounds of defense cannot be struck out.

Mr. Gunter: I stated that this motion was because the matter had been adjudicated and was at Bar to that pleading.

By the Court: On calling of the case for trial the attorneys for the plaintiffs moved the Court, which motion was concurred in by the attorneys for the defendant, that the assessment of damages and any allowance that might be made in

this case be postponed until after the verdict on the title is recorded.

By Mr. Gunter: We move to reject the fifth ground of defense that Jesse R. Watson was devised a fee simple interest in the estate listed in Item #1 of the will of William T. Watson.

By the Court: This motion is overruled for the reason that at this time the Court has no evidence before it to aid it in the construction of the will as set out.

Mr. Gunter: We desire to except to all of those rulings.

Mr. Gunter: We desire to offer in evidence, if your Honor please, the will of William T. Watson, as Exhibit "A".

By the Court: I will permit it.

page 14 } Will read by B. T. Gunter, Jr. (Will found in Wills, Etc. 1855-92, page 41.)

"In the name of God Amen. I, William T. Watson, being sound of mind and memory declare this my last Will and Testament, utterly revoking all others heretofore made by me.

Item 1st. I loan unto my son Jesse R. Watson the Tract of Land whereon I now reside (Excepting a small parcel on the Eastern side, as will hereinafter be set forth) to hold during his natural life and at his death to his lawful heirs. If he should not have any children living at his death it then shall go to his brother, George C. W. Watson, and if he should die without issue then I leave it to the nearest Relative from whence it was inherited by me. Item 2nd. I Loan unto my son George C. W. Watson the land from the Eastern boundary of the Land whereon I now live Westerly to the Eastern Edge of the Glade that lays to the Eastward of my Back lot Fence to be inherited from him and managed in the same manner as above stated to my other son. Item 3rd. I loan unto my daughter, Emily J. Watson, the Tract of Land adjoining Robert Watson and William Risley to hold the same manner as left to my other two children. Item 4th. I give unto my son Jesse R. Watson one old Desk also the one half of a Grey Mair and the other half of the said Grey Mair I give unto my son George C. W. Watson. Item 5th. I leave my wife Elizabeth Watson to be supported out of my property equally with my children until they arrive at age and then one-third to be set off as her dower so long as she lives provided she Remains my widow—but if she should marry it is my desire that all of my property shall be given to my Children. Item 6th. I leave

page 15 } Crippen Bowden to be my sole Executor and desire him at my death to expose to sale at public auc-

tion all the residue of my Personal Property and after paying my legal debts to retain in hand the Balance for the use and necessary support of my children & wife if she does not marry until the youngest of my Children shall arrive at twenty one years of Age and then if there should be anything remaining in hand to be equally distributed among my Children. I also request my Executor (Crippen Bowden) to Rent out or lease any of my lands as he thinks the most advantageous for my wife and Children. But to use no Timber in any case whatever only such as will be needed by my wife and children for fire wood until my Children each shall arrive at lawful Age. In testimony whereof I hereunto set my hand and seal this the 12th day of April, A. D. 1858.

WILLIAM T. WATSON Seal

Test.

JOHN A. M. WHEALTON

JOHN LEWIS

his

DAVID X LEWIS

mark

At a Circuit Court held for the County of Accomack, on the 4th day of May 1858.—

This last will and testament of William T. Watson, deceased, was partly proven by the Oath of John A. M. Whealton, a witness thereto.—And a relinquishment in writing made by Crippen Bowden, the executor named in the said last will and testament, was proven by the Oath of John A. M. page 16 } Whealton, taking Oath and giving Bond according to Law, in the penalty of Four Thousand Dollars (\$4,000), with John E. Wise and Edward K. Snead, sureties thereto, he is appointed curator of the estate of William T. Watson deceased until administration of the estate of said decedent be granted.—And the said Bond having been acknowledged by the obligors therein it is ordered that the same be recorded.

Teste: T. J. RAYFIELD, Dy.
for R. J. Poulson, C. C.

At a Circuit Court held for the County of Accomack, on the 1st day of November, 1858.

This last will and testament of William T. Watson, deceased, heretofore partly proved, was this day fully proved by the Oath of John Lewis, a witness thereto, and ordered to be recorded. And the executor therein named having, at the last term of Court relinquished his right to qualify as such, on the motion of John A. M. Whealton, taking Oath and giving Bond according to Law in the penalty of Four Thousand Dollars (\$4,000), with John E. Wise and Edward K. Snead, sureties thereto,—Letters of Administration with the will annexed are granted to him on the estate of the said William T. Watson, deceased. And the said Bond having been acknowledged by the obligors, therein, it is ordered that the same be recorded.—

Test.—J. W. GILLETT Dy.
for Thos. J. Rayfield, C. C.”

page 17 } Mr. Gunter: The next is the Renunciation of the
Will, which we desire to offer in evidence as Exhibit
“B”.

(Renunciation read by B. T. Gunter, Jr.) Same being found in the same Book, page 40.

“To the Circuit Court of Accomack County:

I hereby renounce the provision made for me in the last will and testament of my late husband, William T. Watson, decd., and claim my right of dower in said estate, as by statute made and provided. Given under my hand this 10th day of June, 1858.

Her
ELIZABETH T. X WATSON.
Mark

Attest:

JAMES P. SELBY
JAMES S. CORBIN.

Accomack County, to-wit:

I, James S. Corbin, a Justice of the Peace for the County of Accomack, in the State of Virginia, do certify that Eliza-

beth T. Watson, whose name is signed to the above writing bearing date 19th day of June 1858, has acknowledged the same before me in my county aforesaid. Given under my hand this 19th day of June, 1858.

JAMES S. CORBIN, J. P.

Accomack County Court Clerk's Office, August 25, 1858. This renunciation in writing by Elizabeth T. Watson, widow of William T. Watson, decd., of the provision made for her in the last will and testament of her deceased husband, was, together with the certificate of acknowledgment thereof before a Justice of the Peace, thereto annexed, received page 18 } by me in the Clerk's Office this day and admitted to record.

Teste: T. J. RAYFIELD, C. C."

Mr. Gunter: Now, if your Honor please, we desire to offer in evidence a deed from Jesse R. Watson and wife to Porter, found in Deed Book 1874-76, page 377, as Exhibit "D". Deed read by B. T. Gunter, Jr.:

This Deed made this the 8th day of May in the year eighteen Hundred and Seventy Five (1875) between Jessey R. Watson & Wife of the first part and George R. Porter of the second part all of the County of Accomac, Chincoteague Isl Va. Witnesseth that the said J. R. Watson & Wife have sold & by these presents doth bargain transfer & deliver unto the said G. K. Porter, in consideration of the sum of One Hundred and fifty dollars the Rect. whereof is hereby acknowledged, a certain lot, or parcel of ground containing One & 1/2 acres, more or less, it being a part of the Wm Watson (deceased) land adjoining lands of widows dower of William Watson, Mrs. J. Whealton &c; Beginning at a Stone in the Road near the said Mrs. Whealtons House, North East side, thence by & with said Mrs. J. Whealton land N 39 1/2 W 145P thence to Widows dower N 54 1/2 E 1675 P thence S 41E15.8P to woods thence to beginning S 58 1/2 W 17.3 P containing 1 1/2 acres more or less; To have and to hold unto the said G. K. Porter his heirs & assigns forever, together all & singular the rents issues and profits thereof apertaining to the same. And the aid J. R. Watson & wife doth by these presents forever warrant & defend the said premises against all claims of every kind claiming against the aforesaid property.

page 19 } As witness our hands & seals this the day and
year above first named.

His
JESSE R. X WATSON Seal
Mark

Her
MARY C. WATSON X Seal
Mark

Virginia
Accomac County, to wit

Jesse R. Watson and Mary C. his wife parties to the foregoing deed personally appeared before us Justices of said County and acknowledged the same to be their act & deed. And the said Mary C. Watson being examined by us privily and apart from her husband and having said deed fully explained to her acknowledged that she had willingly executed the same and wished not to retract it.

Given under our hands the 8th day of May, A. D. 1875.

I. T. KENNEY, J. P.
J. A. M. WHEALTON, J. P.

Virginia: In Accomack County Court Clerk's Office May 10, 1875.

This deed from Jesse R. Watson & wife to George R. Porter was, with the certificate of the acknowledgment thereof thereto annexed, received by me this day, and admitted to record.

Teste, WM. H. B. CUSTIS, C. A. C."

Mr. Gunter: The next we want is Deed Book 51, page 355, a deed from George K. Porter and wife to Josephine Whealton, to be offered in evidence as Exhibit "E".

page 20 } Read by B. T. Gunter, Jr.:

"This Indenture made this the first day of November in the year Eighteen Hundred and Seventy seven between George K. Porter and Amy, his wife, of the first part and Josephine Whealton of the second part, all of Chincoteague Island, Ac-

comac County and State of Virginia. Witnesseth, that the said George K. Porter ad Amy, his wife, have sold and by these presents do sell and confirm unto the said Josephine Whealton a certain house and land on Chincoteague Island for One Thousand Dollars the receipt whereof is hereby acknowledged and bounded and described as follows: one two story house (new) with the lot upon which it is built an lot adjoining said lands beginning in the road near the North East gate of Mr. Tracy's yard in the road thence by and with Jessie Watson's to the Widow's dower No. 54½ E. 16.75 P. Thence along said Widow's dower to the woods S 41 E 15.8 P. Thence by and with said Watsons woodland to the aforesaid road near Mr. Whealton's fence at a Stone in said road S 58½ W 17.30 P. Thence along said road to first beginning Stone in the road near said Wm. R. Tracy's gate, containing 1½ acres. To have and to hold unto the said Josephine Whealton for her sole and separate use, her heirs and assigns forever, the above named premises, and for no other interest or purpose whatever. And the said George K. Porter and Amy (his wife) do by these presents warrant and defend these presents against all and every person whatever unto the said Josephine Whealton her heirs and assigns.

In testimony whereof the said George K. Porter and Amy (his wife) have hereunto set their hands and seals this day and year first above written.

page 21 }

	His	
GEORGE K. X PORTER		Seal
	Mark	
AMY PORTER		Seal

State of Virginia

Accomack County to-wit: George K. Porter and Amy his wife, parties to the foregoing Deed, personally appeared before me, a Notary Public of said County and acknowledged the same to be their Act and Deed. And the said Amy Porter being examined by me privily and apart from her husband and having said Deed fully explained to her, acknowledged that she had willingly executed the same, and wished not to retract it.

Given under my hand this 1st day of November, 1877.

J. A. M. WHEALTON, N. P.

Virginia. In Accomack County Court Clerk's Office, November 5th 1877. This deed from George K. Porter and Amy, his wife, to Josephine Whealton, was, with the certificate of the acknowledgment thereof thereto annexed, received by me this day & admitted to record.

Test: WM. H. B. CUSTIS, C. A. C."

Mr. Gunter: The next is a deed from Josephine Whealton to George K. Porter, found in D. B. 56, page 234, and to be offered in evidence as Exhibit "F".

Read by B. T. Gunter, Jr.

"This Indenture made this the twenty first day of November in the year Eighteen hundred and eighty three between Josephine Whealton of the first part and George K. Porter and Amy Porter (his wife) of the second part all page 22 } of Chincoteague Island, Accomack County and State of Virginia, Witnesseth that the said Josephine Whealton has sold and by these presents does sell and confirm unto the said George K. Porter and Amy (his wife) a certain house and land on Chincoteague Island for One thousand Dollars the receipt whereof is hereby acknowledged, and bounded and described as follows: one two story house (new) with the lot upon which it is built and lot adjoining, said land beginning in the road near the North East gate of Mrs. Tracy's yard in the road, thence by and with S. J. Mumford to the former widows dower of Elizabeth Watson (now owned by James Ed. Matthews & wife) to the woods S. 41 E15.8 Perches thence by and with the woodland of John Fenwick's heirs to the aforesaid road near Mrs. Josephine Whealton's fence at a stone in said road to first beginning stone in the road near said Mrs. C. Tracy's gate, containing 1½ acres. To have and to hold unto the said George K. Porter and Amy (his wife) for their sole and separate use, their heirs and assigns forever, the above named premises, and for no other interest or purpose whatever, and the said Josephine Whealton does by these presents warrant and defend these presents against all and very person whatever, especially against herself and her heirs, but against no other person unto the said George K. Porter and Amy (his wife) their heirs and assigns.

In testimony whereof the said Josephine Whealton has hereunto set her hand and seal this day and year first above written.

JOSEPHINE WHEALTON (Seal)

page 23 } State of Virginia,
Accomack County, to-wit:

Josephine Whealton party to the foregoing Deed, personally appeared before me a Notary Public for said County and the same to be her act and deed.

Given under my hand this 22nd day of November, A. D. 1883.

JOHN A. M. WHEALTON, N. P.

Virginia. In Accomack County Clerk's Office November 23rd, 1883. This deed from Josephine Whealton to George K. Porter and Amy, his wife, was with the certificate of the acknowledgement thereof thereto annexed, received by me this day, and admitted.

Teste. WM. H. B. CUSTIS, C. A. C."

Mr. Gunter: The next one we want is Deed Book 124, page 285, from N. B. Wescott, Special Commissioner, to Robert A. Keas,—the same to be marked as Exhibit "GE, and made a part of this record.

Read by B. T. Gunter, Jr.:

"*THIS DEED* made this 31st day of of October, 1919, between N. B. Wescott, Special Commissioner, of the first part, and R. A. Keas, of the second part;

Whereas, the said Special Commissioner, in pursuance of the aauthority vested in him by a decree of the Circuit Court of the County of Accomack, State of Virginia, made on the 3rd day of June, 1919, in a suit in chancery therein pending, in which Thos. B. Birch was plaintiff and Joshua W. Birch and others were defendants, did sell the real estate herein-after mentioned, and conveyed, on Saturday, July page 24 } 12, 1919, in front of Matthews Hotel, Chincoteague Island, Virginia, according to the terms and conditions required by said decree, at which sale the said R. A. Keas became the purchaser for the sum of One Thousand and Seventy Dollars (1,070.00); and *Whereas*, the said Court, by a subsequent decree made in said case on the 25th day of October, 1919, confirmed the said sale and directed a deed for the hereinafter described real estate to be made to the said

R. A. Keas by the said Special Commissioner upon the payment by said R. A. Keas of the unpaid balance of said purchase price, and upon presentation to said Special Commissioner of a deed properly prepared at the purchaser's expense, inclusive of the requisite Internal Revenue Stamp; and

Whereas, the said R. A. Keas has paid the said purchase price in full to the said Special Commissioner;

Now, Therefore, This Deed Witnesseth: That the said N. B. Wescott, Special Commissioner, as aforesaid, for and in consideration of the premises and of the payment unto him of the said purchase price of One Thousand and Seventy Dollars (\$1,070.00), at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth grant unto the said R. A. Keas, with special warranty of title, all that certain lot, piece or parcel of land situate in the town of Chincoteague, county and State aforesaid, whereon was erected the late residence of Amy Porter, containing One and One-half acres ($1\frac{1}{2}$ A.), surveyed by J. Caulk, Surveyor, May 7, 1875, with the following boundaries given as of that date in the said survey: "Beginning in page 25 } the road near the Northeast gate of Mrs. Tracey's yard in the road, thence by and with Jessey Watson's land to the Widow's Dower N. $64\frac{1}{2}$, E. 16.75 P., thence along said Widow's Dower to the woods S. 41, E. 15.8 P., thence by and with said Watson's woodland to the aforesaid road near Mrs. Wm. Whealton's fence at a stone in said road S. $58\frac{1}{2}$, W. 17.3 P., thence along said road to first beginning stone in road near said Mrs. K. Tracey's gate, containing $1\frac{1}{2}$ acres."

Witness the following signature and seal on the day and year first above written.

N. B. WESCOTT (Seal)
Special Commissioner.

Witness:

T. N. GRANT.

State of Virginia,
County of Accomack, to-wit:

I, John D. Grant, Jr., Clerk of the Circuit Court for the County of Accomack, in the State of Virginia, do hereby cer-

tify that N. B. Wescott, Special Commissioner, whose name is signed to the foregoing writing above, bearing date on the 31 day of October, 1919, has acknowledged the same before me in my county aforesaid.

Given under my hand this 7th day of March, A. D., 1923.

JOHN D. GRANT JR., Clerk.

Virginia:—

In the Clerk's Office of the Circuit Court of Accomack County, March 9th, A. D., 1923. This deed from N. B. Wescott, Special Commissioner, to R. A. Keas, was with the certificate of the acknowledgement thereof thereto annexed received by me in the Clerk's Office this day and page 26 } admitted to record.

Teste, JOHN D. GRANT, JR., Clerk."

FRED E. RUEDIGER,

a witness of behalf of the plaintiffs being first duly sworn, testified as follows:

By Mr. Gunter:

Q. Mr. Ruediger, what is your profession?

A. Civil engineer and surveyor.

Q. At the present time where are you engaged?

A. I am with the Commission of Fisheries.

Q. How long have you been with the Fisheries Commission?

A. This last time four years.

Q. Prior to that time where were you engaged?

A. I was County Surveyor for Accomack County.

Q. How long were you County Surveyor for Accomack County?

A. Thirty-one years.

Q. I believe at one time you resided on Chincoteague as well, did you not?

A. Yes, sir.

Q. Mr. Ruediger, while County Surveyor of Accomack County did you ever have occasion to make a survey of the tract of land of which William T. Watson died seized and possessed, and of which he devised a part of same to Jesse R. Watson?

A. Yes, sir.

Q. I will ask you to look at this blueprint and ask if that is a plat or map of that particular property?

A. Yes, sir.

Q. By whom was that made, Mr. Ruediger?

page 27 } A. By me.

Q. When?

A. The date given on the plat, July 23, 24, 1913.

Q. Mr. Ruediger, how did you secure these boundaries?

A. The Southeastern boundary of the land was at that time a cedar stob. It is the boundary for three other tracts of land. I surveyed two more tracts of land adjoining that corner and all of the land owners acknowledged that to be the true corner of that tract of land.

Q. How did you know the other outlines?

A. The Southwest line of the tract is run out from that point at the Southeast corner to a point on the Shore road, which was pointed out to me by Mr. J. A. M. Whealton as the line of the Whealton tract, which, in other words, coincides with the line or fence on Cleveland Street,—on the South side of Cleveland Street.

Q. Who was Mr. J. A. M. Whealton, to whom you have referred?

A. He was an old gentleman I believe somewheres about eighty years old that is very well acquainted with all of Chincoteague Island. He was born and raised there and seemed to be a great man for information of all kinds regarding titles and people on the Island.

Q. Did he at any time, so far as you know, own any property South of this particular piece of land?

A. Yes, sir, he owned the storehouse property adjoining this land.

Q. Did he own any of the back streets?

page 28 } A. Yes sir, he owned at that time the pasture land here at the back part that covers the same corner I spoke of before as the Southeast corner of this tract of land.

Q. Mr. Ruediger, this Eastern line, how did you determine that?

A. The Eastern line is what they term on Chincoteague as the Splitting Line, which divides all of the property which is on the West side of the Island from the property on the East side of the Island.

Q. How did you determine the Northern boundary,—or the Northeastern boundary of the tract of land?

A. The Northeast boundary. There was a stone pointed

out to me that was buried under the ground that was pointed out by Mr. John Watson, who lived adjoining to the land. Then I took the Southeast corner of the storehouse and dwelling belonging to S. J. Mumford, which was also on the line of his fence, and ran that line out from the shore to the Splitting Line and put it in a corner.

Q. Which formed the Northeast corner of the entire tract?

A. Yes, sir.

Q. Then the Channel is the Western boundary,—is that correct?

A. Yes, sir.

Q. Mr. Ruediger is this a survey of the William T. Watson property?

A. Yes, sir, the William T. Watson property.

Mr. Gunter: We ask to introduce this blueprint in evidence as Exhibit "H".

page 29 } Mr. Gunter:

Q. Mr. Ruediger, I am going to ask you to look at the plat which I hold in my hand, and see if you know anythink about this plat.

(Note) Hands witness blueprint marked Exhibit "C".

A. Yes, sir, that plat was made by Mr. Gibb, the County Surveyor of Accomack County.

Q. Were you present at the time the plat was made, or the measurements were made? You didn't actually take any part in the making of the plat.

A. I was present when the survey was made, yes. I didn't make the plat, that was done by Mr. Gibb.

Q. Mr. Ruediger, I will ask you to look on this map here and the tract of land herein designated as "R. A. Keas 1½ acres", bounded by Cleveland Street on the South, apparently by the Town of Chincoteague on the North and for a short distance Mumford Street on the North or Northeast, and the Southeast boundary being designated by a tract marked as "David Fenwick". Are you familiar with that tract of land?

A. Yes, sir.

Q. Is that a part of the land surveyed by you designated on the plat which you had a moment ago as the William T. Watson property?

A. Yes, sir.

Q. Mr. Ruediger, do you know for what purpose this plat was made?

A. Yes.

Q. State it.

A. The purpose it was made up for was to use page 30 } in Court when the different tracts were called out to show each one of the present holders as claimed as near as possible, without making any effort to establish any property lines.

Q. Mr. Ruediger, in your testimony a while ago you referred to a line known as the Splitting Line. Is that the Eastern boundary of the William T. Watson tract?

A. Yes, sir.

Q. Did you explain to the jury, I am not sure,—by what was meant by the Splitting Line?

A. Yes, I think I did by telling them it formed the boundary between the tracts of land lying on the East side and the tracts on the West side of the Island. It runs nearly the whole distance of the island.

Q. Mr. Ruediger, do you know where the William T. Watson homestead was?

A. Yes, sir.

Q. Where was it?

A. It was on the tract of land described here as Jesse Watson heirs, lying between the lot of Earl Watson and the land of William J. Matthews. It stood at a Southerly direction from the old Atlantic Hotel.

Q. That was the residence of William T. Watson?

A. Yes, sir.

Q. Mr. Ruediger, William T. Watson, by his will, in the first item says: "I loan unto my son, Jesse R. Watson, the tract of land whereon I now reside, except a small page 31 } parcel on the Eastern side, as will hereafter be set forth, to hold during his natural life and at his death to his lawful heirs. If he should not have any children at his death then it shall go to his brother George C. W. Watson and if he should die without issue then I leave it to "his sister, Emily J. Watson, and if all die without issue I leave it to the nearest relative from whence it was inherited by me. —After hearing that description in the will can you state whether or not the Keas property, which is described in the declaration, and which you have pointed out on the plat before you as follows;—Bounded North by Mumford Street and the land of the heirs of Jesse R. Watson decd., South by Cleveland Street, East and West by the land of the heirs

of Jesse R. Watson, decd.,—was a part of the land devised by William T. Watson to Jesse R. Watson for life?

J. Brooks Mapp: If your Honor please, we object to that question as calling for a conclusion by the witness. We have raised no question to the witness testifying as to any physical facts to help the jury or the Court, but this question is asking this witness to act as Judge, jury and everything. It is calling for a conclusion of the witness, instead of some statement of fact.

Mr. Gunter: It is a fact, if your Honor please, that I am trying to elicit from him.—He has made a survey with the William T. Watson property and is familiar with the survey made of the Keas property and he knows the provisions of the will. I am asking him to state if, in accordance with the will, that was a part of the William T. Watson property.

Mr. J. Brooks Mapp: We have no objection to page 32 { anything about the survey, but we do have an objection to any conclusion of the witness.

By the Court: I will permit him to answer the question.

Mr. Mapp: We save the point.

A. (By Mr. Ruediger) From my knowledge of the property and local ideas people have about the property it is all called the Jesse Watson land,—

Mr. J. Brooks Mapp: We object to that. Witness starts out to say from his own knowledge and local ideas,—not only his ideas but the conclusion of the general public.

By the Court: I think he can give his conclusion as a surveyor and from reading the will.

Mr. J. Brooks Mapp: Not of the local knowledge of the public.

By the Court: If he can give his own ideas.

A. (Contd.) It is a pretty hard matter for a surveyor to testify unless he testifies from what he gets from other people. I survey—or cannot survey a piece or property if he cannot get some information from outside.

Q. You just answer the question, if you can.

A. From my own knowledge I am pretty sure it is a part of the property devised to Jesse Watson.

Q. Under the first item of the will that I have read you?

A. Yes, sir.

J. Brooks Mapp: We ask to have that answer struck out.

The Court: Objection overruled.

J. Brooks Mapp: Exception noted.

page 33 } Mr. Gunter:

Q. I believe you have stated, Mr. Ruediger, and if you haven't I am asking you now, if the Northeast boundary of this property, the William T. Watson property was Mumford Street?

A. I yes.

Q. The eastern boundary is what is known as the Splitting

A. Yes, sir.

Line?

Q. The southeastern boundary is Cleveland Street?

A. Southwestern boundary.

Q. And the Northwestern boundary is the Channel?

A. Yes, sir.

Mr. Gunter: We desire to offer in *evidence* this plat, marked Exhibit "Y". You gentlemen take the witness.

CROSS EXAMINATION.

J. Brooks Mapp:

Q. Mr. Ruediger, do you know a man named J. Caulk, a surveyor?

A. No, sir, he died before my time.

A. I will ask you if you have ever seen that survey made by him.

A. No, sir. This is the first time I have seen it. That is the same tract of land as indicated on here by the dotted lines on this plat. It is right on this plat.

Mr. Mapp: That is all.

RE-DIRECT EXAMINATION.

Mr. Gunter:

Q. Mr. Ruediger, have you ever seen a copy of a survey purporting to have been made by Caulk, the surveyor who has just been referred to, as a survey of the William T. Watson tract of land?

page 34 } A. I have seen two copies of the land that is in dispute here in this case.

J. Brooks Mapp: Mr. Ruediger, this Mr. Caulk was a surveyor at one time?

A. Yes, he was surveyor on Chincoteague Island, Mr. Mapp.

Mr. Gunter:

Q. Have you ever seen that plat before? (Handing small plat to witness.)

A. Yes, sir, it is a copy I made for you.

Q. From what did you make it?

A. From a copy that was handed me by Dr. John W. Field.

Q. Did the plat that was handed to you by Dr. John W. Field have a certificate of the surveyor, Caulk?

A. No, not the certificate of Caulk. It was a copy that Dr. Field had made from a survey made by Caulk.

Q. Mr. Ruediger, was Dr. Field an adjoining land owner?

A. Yes, sir.

J. Brooks Mapp:

Q. This is a copy made by you from a copy of Dr. Field's plat, which was made from Caulk's plat. Is that the idea.

A. Yes, sir. You have a copy of it yourself, Mr. Mapp. You showed it to me.

G. Walter Mapp: Is this purporting to be the widow's dower?

A. Yes, it referred to that. At the same time it mentioned the fact that the widow's dower was not laid off on that plat. It was a survey of the entire tract.

page 35 } Mr. Gunter:

Q. Does this purport to be a survey of the entire William T. Watson tract of land?

A. Yes, sir.

Mr. Gunter: We ask to be permitted to introduce this in evidence as Exhibit "I".

J. Brooks Map: We object to it on the ground that it is not the original. The original has not been accounted for. This is a copy of a copy, as I understand it.

By the Court: I would think you would have to show something about the original.

Mr. Gunter: Frankly, I cannot show what became of the original. I don't know. There is no *hart* stating here. Dr. Field had it, but what became of it we don't know. While Mr. Ruediger was on the island in his life time he showed Mr. Ruediger that plat.

Mr. Ruediger: No, he gave me the only copy he had and told me that it might sometime be of service to me.

Mr. Gunter: I don't mean to say he gave you the original but he gave you the copy he made himself.

Mr. Gunter:

Q. Did you ever see the original?

A. No, sir.

Q. That is as near as I can come to it.

J. Brooks Mapp: That is a copy made by a layman of a surveyor's plat. Mr. Ruediger made it like Mr. Field showed him, but we have no way of showing in what way page 36 } Dr. Field was acting.

Mr. Ruediger: Dr. Field was a surveyor, too. He surveyed.

By the Court: Do you gentlemen know whether that has any connection with the plat of 1875?

Mr. Gunter: I don't recall a plat of 1875.

By the Court: It referred to it in the deed from N. B. Wescott, Special Commissioner, to R. A. Keas.

J. Brooks Mapp: If your Honor please, this is the one we have here in May 7, 1975, signed J. Caulk, Surveyor.

By the Court: Gentlemen, I don't believe I can permit that plat. I will sustain your objection.

Mr. Gunter: That is all, Mr. Ruediger.

JOSEPH B. GIBB,

a witness on behalf of the plaintiffs, being first duly sworn, deposed as follows:

Mr. Gunter:

Q. Mr. Gibb, what is your profession?

A. County Surveyor of Accomack County.

Q. How long have you been County Surveyor of Accomack County?

A. I was appointed the first of February, a year ago.

Q. I will ask you to look at the plat which I have here in front of me and which has been introduced in evidence, and ask you to state who made that plat.

A. I made it.

Q. Where did you get your information to make this plat?

A. Well, through Mr. Ruediger partly. I was sent to make that surveyor and he went with me. Some of the Watson heirs were along, and in company with them we made the page 37 } survey.

Q. What was the purpose of making the survey?

A. The purpose of identification,—to identify the various parcels of property in those lines.

Q. Held by numerous people?

A. Yes, sir.

Q. Did you make actual measurements as to each piece of property?

A. No, sir.

Q. You have located them generally on the plat?

A. Yes, sir. But a lot of places no boundary appeared. In some places we had a fence to go by.

Q. What is this intended to be a plat of?

A. The William T. Watson land.

Q. Look at this map and tell us the Northeastern boundary of it.

A. The Northeastern boundary is shown by this heavy line, designated as the Watson line. It forms at the present time the Northeast boundary of Mumford Street, part of it, and continues on in an Easterly direction to what they call the Splitting Line.

Q. What is the splitting Line?

A. A line that runs through the island separating the property on the Eastern side of the Island from the property on the Western side of the Island.

Q. What is the Southeastern boundary?

A. That is the Splitting Line.

Q. Whose property adjoins it on the East, separated by the Splitting Line

A. S. B. Field's.

page 38 } Q. What is the Southern, or Southwestern boundary?

A. That is shown by this full line designated on here as Watson line, and one section of it is the same as the Southwestern side of Cleveland Street.

Q. What is the Northwestern boundary?

A. Chincoteague Channel.

Q. I notice a street crossing from Southwest to Northeast. How is that designated?

A. Willow Street.

Q. That runs through the property?

A. Yes, sir.

Q. Does Cleveland Street extend further East than Willow street, if you know?

A. It is a lot there, but I don't think it is opened as a Street.

Q. How about Mumford Street. Does that extend beyond Willow Street?

A. That don't go to Willow Street.

Q. Doesn't extend as far as Willow Street?

A. No, sir.

Q. Mr. Gibb, on this plat is a tract marked "Keas 1 1/2 acres". How did you mark that off—from what information?

A. I hunted up the deed from N. B. Westcott to R. A. Keas and acres and distances and then we had already platted the fences and apparent lines that were pointed out to me as the boundary of the Keas plat. Then I assumed that this Western line was the boundary referred to as center of the lot in the description of the deed and used that as a page 39 } basis, and the description tallied exactly, and then, according to the angles and the description in the deed.

Q. Then according to the description in the deed the front line or line on Cleveland Street is the same as here as at present?

A. The distances corresponded.

Q. The Southeastern boundary of it is the same as at present?

A. That corresponded exactly.

Q. How about the Northwestern and Northeastern boundaries?

A. There is a difference there in the line at present as was pointed out to me as Mr. Keas boundary, making an angle of approximately 90° with Cleveland Street, and the line according to the deed makes an angle of 86° with Cleveland Street.

Q. Then the dotted line which is on here on the Northwestern side and on the Northeastern side as well are intended to be the boundaries as given in that deed.

A. Yes, sir.

Q. The solid line on the Northeast as designated on this plat, what is that?

A. That is what was pointed out to me to be the line, and that was designated as Town of Chincoteague and Keas property.

Q. The line on the Northeast side here, which is partly broken, what is that?

A. That represents the line between the Keas property at the present time and the Keas property that he received from Matthews.

Q. According to that deed that is what it was supposed to be?

A. Yes.

Q. What is this piece of land marked "R. A. page 40 } Keas from Matthews" with a house on it extending from Mumford Street to Cleveland Street? How was this designated,—from what information?

A. Just to show, as I understand, it was a different tract, and to show the difference in the two parts.

Q. That was from information as to these lines,—how did you secure that information,—that is what I am trying to get at?

A. Mostly from Mr. Ruediger, and the Watson heirs were present.

(Note:) Noon recess.

AFTERNOON SESSION.

Mr. Gunter (Contd.):

Q. Mr. Gibb, at the request of the plaintiffs in this suit have you made a topographical map of the Eastern portion of the William T. Watson land?

A. Yes, sir.

Q. Look at this plat, which I hand you here. Is that a plat made by you?

A. Yes, sir.

Q. What in general does that plat show, Mr. Gibb?

A. It shows the topographical features—the glades and woods land between the glades, and lots there in grass and a few briars that may be termed as cleared land on the Eastern part.

Q. What is the Eastern boundary here?

A. The Splitting Line.

Q. Whose land lies to the Eastern side of it?

A. S. B. Field's.

page 41 } Q. What is the first thing, Mr. Gibb, that you strike here?

A. The Splitting Line is right in a glade.

Q. How is that Splitting Line marked?

A. It is a concrete block at the Southeast corner and a block at the Northeast corner.

Q. That runs through a glade?

A. Yes.

Q. What is the next thing that you strike?

A. A piece of woods land.

Q. Large pines, small pines, or how is it?

A. Medium pines and myrtles and underbrush.

Q. What is the next thing?

A. The glade.

Q. How far does that run?

A. It goes completely through the tract.

Q. Does the first one at the Splitting Line go clear through?

A. Yes, sir.

Q. What is the next thing?

A. That is a partial glade. Not quite as well pronounced as the other glades. It is almost cut in two at places. It goes approximately through the tract. The bushes almost lap at places.

Q. What is next?

A. Another strip of woodland.

Q. What is next to that strip?

A. The largest glade of any, with the possible exception of the first glade. It isn't much difference in those
page 42 } two.

Q. How far does that go?

A. Completely through the tract.

Q. Is that called the Canal, or not?

A. That is what it is termed, a Canal glade.

Q. What do you come to after you get to that?

A. Then there is a piece of brush and pines through the West side of that glade,—the Northwest side rather,—and then there is a lot of cleared land.

Q. About how wide is this woods land, or undergrowth, that skirts this glade that is spoken of as a Canal on the Western side of the glade?

A. It is irregular. It may run from 150 feet, or maybe 125 feet.

Q. It runs in comparatively close to the glade, is that right?

A. Yes, sir.

Q. You have spoken of this as cleared land. What is the character of the land?

A. It is mostly a little grass and a few weeds. The fishermen use it to spread their nets out.

Q. What is this point up in the corner,—what is that designated

A. That is where they heat their tar to fix the nets.

Q. What is this in the Southwest section?

A. Some briars and bushes. Not trees, but mostly bushes and briars.

Q. Mr. Gibb, about what is the acreage, exactly if you know, lying between the Eastern side of this glade and the Splitting Line?

A. It is approximately four acres.

page 43 } Mr. J. Brooks Mapp: Which piece was that, Mr. Gunter?

Mr. Gunter: From the Eastern side of the glade back to the Splitting Line.

Mr. Gunter (Contd.):

Q. About what is the acreage of this piece here from the Western side of the glade up to this line you have marked across here?

A. It is a little over four acres. I couldn't say exactly.

Q. Now, Mr. Gibb, what is the character of the land which lies between this land that you have across here and the Keas lot?

A. It is a small one on a slight branch. It is a little more. Right next to the fence there are briars and bushes growing, and then there is a strip of woodland for maybe 100 or 200 feet, and then another cleared lot that extends to Willow Street.

Q. Mr. Gibb, what is the acreage of this entire tract, starting at the Channel here and going back to the Splitting Line?

A. I scaled it off, taking a straight line from the Western end of this Northeast boundary of the William Watson tract to a straight line over to the Western end of the Southeast boundary of the tract, and the scale was approximately 24.9 acres. The exact acreage is on Mr. Ruediger's blueprint.

Q. Mr. Gibb, starting here at the Northwest side of the 1½ acres marked "R. A. Keas" on this plat, going back to the Splitting Line how many acres in that?

A. I cannot give you the exact acreage to that, but it is a good two-thirds of the tract.

Q. Good two-thirds of the entire 24-acre tract?

A. Yes, sir.

page 44 } Q. That is taking in this main body of the Keas tract here?

A. Yes.

Q. The measurements and the plat just referred to have reference to the William T. Watson land map that was introduced in this proceeding this morning. Is that correct?

A. Yes, sir.

Mr. Gunter: If Your Honor please, we ask to be permitted to introduce this plat in evidence, as Exhibit "J".

Mr. Gunter: You gentlemen take the witness.

CROSS EXAMINATION.

Mr. J. Brooks Mapp:

Q. Mr. Gibb, coming first to the plat you made of the William T. Watson tract, the first one that was introduced in evidence, I understood you to say you got your information on which that plat was based largely from Mr. Ruediger and the Watson heirs. Is that correct?

A. Right, yes, sir.

Q. Was Mr. Keas, the defendant in this suit, present, or to your knowledge was he notified or asked to be present when that survey was made by you?

A. No, he wasn't present.

Q. You know Mr. Keas, do you not?

A. I didn't at that time, but I have seen him since.

Q. Did you state he wasn't present at that time?

A. Not to my knowledge.

Q. As a matter of fact, you made that plat for page 45 } the Watson heirs and their attorneys, did you not?

A. Yes, sir.

Q. Now coming to the *typographical* plat, the last one introduced in evidence, can you designate here on this plat, if anywhere, the land in dispute?

A. On this plat?

Q. Yes, the one showing the trees and the glades, etc. Can you show the Court and jury about where the Keas tract is?

A. It isn't on this tract.

Q. Not on there at all?

A. No, sir, not on this one.

Q. It doesn't pretend to be included in the land surveyed there at all?

Mr. Doughty: I don't believe Mr. Gibb understood that question that it isn't intended to be in the land surveyed in this plat. As I understand it, this *typographical* plat is included in this plat. It is a part of this plat. (Referring to Exhibit "C".)

Mr. J. Brooks Mapp: I am asking him is the Keas land in this plat. (Referring to *typographical* plat.)

A. No, it isn't.

Q. At whose request was this last plat made?

A. At the request of counsel for the Watson heirs.

Q. Was Mr. Keas present, or to your knowledge notified, when that was made?

A. No, sir.

Q. Mr. Gibb, is there, or is there not a glade on the West-

ern side of the Keas land now in dispute extending
page 46 } across that Western line?

A. Yes, sir.

Q. Does or doesn't that glade extend all the way across that Western line?

A. Practically. The streets have been filled in. It may have extended back a little bit. I have been told it originally did go all the way through.

Q. Does or doesn't this line here indicate that that glade did originally extend all the way through there?

A. I had no reason to doubt it. I was told so.

Q. And the part that hasn't been filled in by the streets is still there?

A. Yes, sir.

Q. How long have you been County Surveyor?

A. About one and a half years.

Q. You don't pretend to know what the lines are, or were originally.

A. No.

JOHN SNEAD,

a witness on behalf of the plaintiffs, being first duly sworn,
testified as follows:

By Mr. Doughty:

Q. What is your full name, Captain?

A. John T. Snead.

Q. How old are you?

A. 76.

Q. Were you born and raised on Chincoteague Island?

A. Yes, sir.

Q. Lived there all your life?

page 47 } A. All my life.

Q. Did you know William T. Watson in his life

time?

A. No, sir.

Q. Do you know where his homestead was on Chincoteague?

A. Yes, sir.

Q. Where?

A. Just a little back of where Mrs. Lewis lives.

Q. What Mrs. Lewis?

A. Mrs. Sallie Lewis.

Q. Does Mrs. Sallie Lewis' property face on the Main County road?

A. Yes, sir, the Main County road.

Q. Are you familiar with the house in which Earl Watson lives—do you know where Earl Watson lives?

A. Earl?

Q. Yes.

A. You mean Jessie's son?

Q. Yes.

A. Yes, sir.

Q. Where was the homestead with reference to Earl Watson's house?

A. It was, I should imagine, about South of Earl.

Q. Was it on the East side or the West side of the County, or Main Shore County road?

A. It was on the Eastern side.

Q. When you first remember were there any buildings between the Main Shore County road and Chincoteague channel?

A. No, sir, it wasn't one when I can first remember.

Q. Was there any fence anywhere near the William T. Watson homestead?

A. There was a fence around the homestead.

Q. About how far from the house did it go around?

A. It didn't go very far back, just enough for a good garden and some fruit trees.

Q. Did it encircle the house?

A. Yes, it circled the house.

Q. Did that fence go from what is now Cleveland Street as far North as Mumford Street?

A. No, sir.

Q. Do you know what the lines were on the William T. Watson tract of land?

A. I know where it joined it on the North,—Southwest side of the old Sharpley tract.

Q. You know where Cleveland Street is?

A. Yes, sir.

Q. Cleveland Street has been only opened in recent years?

A. I remember when it wasn't no street there at all.

Q. Do you know what property Cleveland Street came from?

A. I don't know whether it came from the Watson tract or not. We had a tract of land on the back and the Watson tract jutted on our line and went back to the splitting line.

Q. Your tract is what is now Southwest of Cleveland Street?

A. Yes.

Q. And it went back,—the Watson tract—to the Splitting Line?

A. It went as far back as the Watson land went.

Q. You are familiar with the glade on Chinco-
page 49 } teague known as the Canal?

A. Yes.

Q. Was there any cleared land on the Watson tract near the Canal?

A. Yes.

Q. Was there any on the West side of the canal?

A. Yes, a ridge goes right down.

Q. Do you know whether that is the same piece of land on which the tar pots are now placed?

A. The same piece.

Q. Do you recall whether there ever was a fence on the West side of the canal?

A. Yes, sir.

Q. Around the vacant lot?

A. Yes, sir.

Q. What kind of a fence was that?

A. It was a log fence. They had no plank fence in that time.

Q. Was that what is known as a stake and rider fence?

A. Yes, sir, a stake and rider.

Q. Coming West from the cleared lot, which is designated on a plat here—typographical plat—as a “Tar Pot”, coming West what was the character of the land?

A. It was a glade on the Northwest side of this tract and then you come to a big body of woods. That run to a lot that is now called Willow street, then that split the timber on the Northwest side of the Willow Street was another block of timber.

Q. How far West of Willow Street did the timber
page 50 } ber continue?

A. Somewhere about *wheres* the lock up is.

Q. Are you familiar with the Eastern line of the land now occupied by R. A. Keas?

A. No.

Q. Do you know where his house is?

A. Yes.

Q. Did the timber come as far as his house?

A. Pretty much as far as the house is.

Q. The lock up is on Mumford Street?

A. Yes, sir.

Q. From the timber you have just described as stopping practically at the Keas house, from there on to the County road what was that, cleared land or in timber, the Main Shore County road?

A. It was kind of underbrush grown up there. No pines to amount to anything.

Q. Where were the first pines you struck going from Keas house to the *channel*?

A. About where the old hotel is.

Q. And that is on the Eastern side of the Main County road?

A. Yes, sir, Eastern side.

Q. Do you know what was the Northern line of the William T. Watson tract?

A. It was Mumford Street on the North.

Q. Do you know what was the Western line?

A. The Main Channel.

Q. Chincoteague Channel?

A. Yes, sir.

page 51 } Q. Capt. John, did you ever hear the lot which is now designated on the typographical plat as the tar pot lot,—was it ever designated in any way?

A. Yes, sir.

Q. What way?

A. They called it Watson's back lot. That is what it used to go by.

Q. Do you know whether there was any fence between the fence that you have testified to circled the house and the lot which you say was spoken of as Watson's back lot?

A. No, sir.

Q. You do not know, or there wasn't any?

A. There was none that I ever seen there. It was a clear pass way all the time.

Mr. Doughty: You gentlemen take the witness.

CROSS EXAMINATION.

J. Brooks Mapp:

Q. Mr. Snead, how many glades, if you know, were between the Watson homestead and the Splitting Line?

A. How many gullies?

Q. Yes, sir.

A. Three.

Q. Three or four?

A. No, four.

Q. Which is right, three or four?

A. I think it was four,—that includes just before you get to the back lot.

page 52 } Q. Does that include the *glad* that the splitting
Line passes through?

A. Yes, sir.

Q. As a matter of fact, weren't there five counting that?

A. I can't remember five.

Q. How long did you say you had been familiar with this property?

A. I suppose I have been familiar with it ever since I could remember anything.

Q. How long has that been?

A. I could remember back as far as '65 anyway.

Q. How many fences were between the homestead of William T. Watson when you first remember, about '65, and the Splitting Line, the extreme Eastern boundary?

A. I do not know of any except the fence that separates that back lot from the Canal, outside of the homestead fence. That was a small lot.

Q. Did it make a circle around the house?

A. Yes, sir.

Q. About how much land would you say was included in that fence?

A. I don't think over half an acre, no way. Just a small garden, he didn't have much front fence.

Q. That made a circle all the way around?

A. Yes.

Q. What did the back fence, by what you have referred to as the canal, what did that include?

A. That included that back lot and I have an idea it was a fence to the Northwest sometime or other, but I
page 53 } do not remember that. I think he had that enclosed
and tended the lot.

Q. Do you remember any fence on the other side?

A. Which side?

Q. What I am asking you is which side of the lot referred to was the fence, if you remember?

A. On the Southeast side.

Q. Do you remember a fence on the Northwest, Southwest or Northease sides?

A. I know there was a fence on the Northeast side.

Q. Where did that fence cross the Watson property?

A. It went right down Watson's line.

Q. Along what street is it now?

A. There wasn't no street at all. It just stopped right there to that lot that hitched on to the lot owned by old man John Tygnall. But the Southeast fence was down and I guess the Northwest side went down.

Q. In other words, you remember two fences. One on the Northeast side and the Southeast side?

A. That is all. I don't remember any fence to join the North. It might have been one there.

Q. Are you able to state how it is that you can remember any of these fences? Anything occur to impress it on your mind?

A. Nothing.

Q. When was it that you first had any occasion to think of these fences recently?

A. It hasn't been many years since the Southeast line rotted down.

Q. About how long has it been since there was a
page 54 } fence there?

A. I can't tell you.

Q. Can you give any approximate idea?

A. The old logs were laying there, some of them, when they first had a baseball ground there. It was a great place for baseball.

Q. The Court don't understand, about how long has it been since there was a fence there in years, if you can give an idea?

A. I can remember back as far as sixty years, all right, and the fence was there then in good shape.

Q. I understood you to say it hadn't been very long since there was a fence. About how many years has it been.

A. Forty or fifty years.

Q. Since there was any fence at all?

A. Yes.

Q. Which fence went down last,—that fence or the one around the homestead?

A. The one by the homestead they kept up for a long while. Old man Jim Thornton kept the place up after he bought it. He bought the widow's dower. He kept the fence up.

Q. How long ago was it that that fence went down?

A. The homestead fence?

Q. Yes.

A. About the time that old man Kim,—old man Jim Ed Matthews,—had it all tore down.

Q. About when was that?

A. I don't know when he bought that place.

Q. Thirty or forty years?

page 55 } A. I should imagine near thirty years,—thirty-five.

Q. In other words, your recollection is there was a fence

back there near the canal and that went down about forty years ago?

A. Yes.

Q. And the fence around the homestead went down about thirty years ago?

A. Yes.

Q. What was the condition of that land, the tarpot lot?

A. It was good clear land. I don't think it had been very long before it was tended. The corn rows were still there.

Q. Do you remember it ever being in cultivation?

A. No, but I know it was good tillable land.

Q. This land just East of the homestead was good tillable land, wasn't it?

A. Yes, I think they had a pretty good garden there.

Q. There is no question in your mind about that?

A. No, sir.

Q. Back to the time when you first remember which was the most *valuable* tract of this tract, the East or West part of the William Watson property?

A. You mean smack back to the Splitting Line?

Q. Yes, sir.

A. You take that front property at that time, it wasn't worth much.

Q. The back property wasn't worth much?

A. Not so very much. The old people valued the back property more than the front, because they didn't know
page 56 } how long it would be before it was going to be destroyed by the tide.

Q. And that was the reason they valued it more?

A. Yes, sir.

That is all.

WILLIAM J. JESTER,

a witness on behalf of the plaintiffs, being first duly sworn testified as follows:

By J. Harry Rew:

Q. What is your name?

A. William J. Jester.

Q. How old are you, Capt. Jester?

A. I was born in 1849. I am now in my 83 years, about one-half of the third year.

Q. Did you know William T. Watson?

A. Yes, sir, I have seen him when I was a boy. Yes, sir, I have seen him.

Q. Do you know where he lived at the time of his death?

A. Yes, sir. I know where he lived. I suppose he died the same place.

Q. Where was his homestead?

A. Well, it was about in the center of the Watson property from Cleveland Street to Mumford Street, about in the center.

Q. With reference to the old Hotel, where was it located?

A. It was right back of the hotel, about Southeast of it on the Southwest end.

Q. Did the house front the Main Shore County road or not?

A. Yes, sir. It had,—I call it the front because page 57 } the chimney was on the Southwest end, and the other end was a bed room. I have been in the house many times. Here is a door and here a door, this goes Southwest with the Island. Here is a door and here is a door and here is the chimney.

Q. Were you familiar with the William T. Watson tract of land?

A. Well, about as I am now. I always knowed it as it is now, so far as I have any recollection. I was a youngster when I knowed William Watson. I never noticed no property much. I do remember Mr. Watson because he took me to his apple tree and give me apples and childlike I noticed that part, but as for noticing the property the way it was situated, I can't say that I do. I knowed where the grave-yard was and I knowed where the orchard was.

Q. Do you know where the back lot was?

A. Yes, sir. So far as my recollection will allow me I know it was back to the canal. They cut that canal and years and years after he died.

Q. Do you know the tract of land on which is now the tar pot—referred to as the tar pot lot?

A. Yes, sir, that was in the Watson tract.

Q. Was that or not known as the Watson back lot?

A. So far as I now remember it was.

Q. Captain Jester, was there a fence around that lot?

A. Yes, sir, there was a fence on the Southeast end of that field, we called it a field. On the Southeast and there was a fence running to the glade and about in the center of this lot there was timber. It was right smart thick timber. When I was a kid, but since that has been cut down. But page 58 } this back lot was untillable.

Q. What kind of a fence was on the Southeast side, if you know?

A. They had no fence that I can recall them but what was this worm fence, or stake and rider fence. Don't they never have no fences like that on the Mainland? Back there in them days that is all the kinds they had. That is the only fence I remember with us.

Q. Captain Jester, was there any other fence running across the Watson tract from Mumford Street to Cleveland Street?

A. I can't recall. I don't remember. I don't remember seeing any.

Q. Was there any fence running around the homestead of William T. Watson?

A. Yes, sir.

Q. Are you able to state how much land was enclosed by that fence?

A. Well, I don't think it would take in over half an acre.

Q. Did that fence extend from Cleveland Street to Mumford Street?

A. No, sir, about in the center. It took in the house,—maybe a lot more than the width of this hall (or the length of it) on each side. I can't say whether it took in the garden spot or not. I think that part of it did.

Q. Between there and the back lot that you have referred to, what was the character of the land? Was it in cultivation? Or timber?

A. Not cultivated back to the branch. When I call it the branch I have reference to that right across to Mr. Keas' house. There is a branch there yet. It isn't tillable yet.

Q. When you first knew this property were there any buildings on the Northwest side of the Main Shore
page 59 } Road

A. I don't think there was a building. I think I can remember when the first building was put there. I believe—I will not say positive—I believe by Mr. Robert Watson. I remember before any buildings were ever put there. It used to be the lot on the West side where the Main Street is, and there were very heavy pines out there by the hotel, and to the West where the hotel was. Even out in the street where it is not. You could cut a cord of wood almost in a pine.

CROSS EXAMINATION.

By Mr. J. Brooks Mapp:

Q. Mr. Jester, you are 83, I believe you say?

A. You can figure it up better than I can. I was born December 1, 1849.

Q. You were a boy nine or ten years old when William Watson died?

A. I suppose I was. I don't remember just when he died. Who is this I am talking to?

Q. Mr. Mapp.

A. Do you know where Mr. William R. C—— lived?

Q. I should, but I don't. That is all right.

A. Some gentlemen here does. I was born right there and this man Watson was our nearest neighbor.

Q. About how old a man was he when you remember him?

A. You take a boy at my age has poor recollection of a mans' age.

Q. The chief thing you remember was those apples?

A. Yes, sir.

Q. Where was the orchard?

A. Southeast of the building.

page 60 } Q. How near was that to his home?

A. Some of the trees was near as the length of this hall. Very near, to my judgment.

Q. Are you familiar with what they call the tar pot lot?

A. I don't know right now where you call it. I am familiar with all of it.

Q. What I am asking you is could you go to the tar pot lot right now. Could you take Judge Nottingham and show him?

A. I cannot for this one reason,—they have tar pots here and tar pots yonder. Do you mean where the tar is now?

Q. Yes, sir.

A. I find them several places. They never come to my notice. I don't recall. Which side of the street is it on, which side of the street running through Tick Town?

Q. These gentlemen are more familiar with this than I am.

Mr. Doughty: If you will ask him the question if he is familiar with the lot he rode back to with me I think you can locate him.

A. I know the lot I went back to with Mr. Doughty, yes, sir.

Mr. Mapp (Contd.):

Q. Captain Jester, how many fences do you remember on this William T. Watson property?

A. The fence that was around the house. I remember the fence that was on the Southeast end of the said building of Mr. Watson. Of course,—

Q. Just a minute, please, sir. You say on the Southeast end

of the property. You mean to the Splitting Line?
 page 61 } A. No, sir, I have reference to the high land.

Q. What was the condition of the land West of that fence that you are talking about, the one that you remember?

A. Of what fence?

Q. The one that ran near the glade.

A. There was some tillable land back there, and most of it was timber land. I build tents there for a camp meeting ground and there was large timber from 12 to 15 inches.

Q. And that was there when you first remember?

A. Yes, sir.

Q. How much of that lot back there was in that big timber?

A. It reached from side to side.

Q. Was any of that land in cultivation?

A. Yes, sir.

Q. What land was that?

A. As far as I can recall, in this back lot there is a place there—in the back lot where you call the tar pot (I had the Tea Pot Dome in my mind)—there was tillable land, and tillable land up here East of the grave yard.

Q. Do you remember anything being planted in tar pot lot?

A. Nothing but corn.

Q. Do you remember seeing that?

A. No, sir.

Q. In other words, of your own knowledge you cannot say anything was planted in that lot?

A. No, sir, because I was too young for that.

page 62 } Q. Captain Jester, when you left the homestead and the fence you say you remember around the homestead, what was East of that? Was that a lot?

A. To the East of the grave yard, was cleared land.

Q. That was next to the homestead?

A. Yes, sir, right back of his garden.

Q. First to the home, then the garden and then the grave yard, and then cleared land?

A. Yes, sir.

Q. Between that cleared land and this tar pot was another glade?

A. Yes, sir, on the Northwest there is a glade. It is there yet, on the Northwest side of Mr. Keas' place.

Q. I want to ask you this question. Can you, of your own knowledge, say there was or wasn't a fence along by that glade?

A. No, sir, I have no recollection. I can't say.

Q. You cannot say whether there was or was not?

A. No, sir, I cannot.

Q. That is all.

Mr. Gunter: Stand aside, sir.

JOHN WESLEY FLETCHER,
a witness on behalf of the plaintiffs, being first duly sworn,
testified as follows:

By Mr. Doughty:

Q. What is your name?

A. John Wesley Fletcher.

Q. How old are you?

A. Eighty-two.

page 63 } Q. Where were you born?

A. Hog Island.

Q. Where do you now live?

A. On Chincoteague.

Q. How long have you lived at Chincoteague?

A. I went there when I was fourteen years old.

Q. Have you lived there ever since?

A. Yes, sir.

Q. Of course, you didn't know William T. Watson, did you?

A. No, sir.

Q. Do you know where the William T. Watson homestead was?

A. Yes, sir.

Q. Where was that with reference to Earl Watson's home now?

A. It was about a Southeast course. Just,—say here is the Watson house and here was the other house right there, that old homestead.

Q. Are you familiar with the tract of land known as the William T. Watson land

A. I lived right around there since I have been to Chincoteague.

Q. How long have you lived there? I mean, how close have you lived to it?

A. I think there is five building lots between my house and the Watson tract.

Q. You live South of the Watson tract?

A. Yes, sir.

Q. Have you lived there ever since you have been on Chincoteague?

A. No, sir.

page 64 } Q. For how long have you lived there?

A. Thirty-five *year*, maybe forty.

Q. Do you know what was the Eastern boundary of the William T. Watson tract?

A. Yes.

Q. What?

A. Some of them call it Holly Ridge.

Q. Any other name?

A. That is all I ever heard it called.

Q. How far is that from the glade known as the Splitting Line?

A. That is the Splitting Line.

Q. Do you know what is the Southern boundary of the William T. Watson tract?

A. Yes.

A. It is Mumford Street and Cleveland Street. They go from Mumford Street to Cleveland Street.

Q. Mumford Street is not on the South.

A. Mumford Street is Northeast.

Q. Do you know what is the Western boundary of the William T. Watson land?

A. Chincoteague Channel.

Q. Are you familiar with the glade known as the Canal?

A. Yes, sir.

Q. Does that run across the William T. Watson land?

A. Yes, sir. It runs across lots of land.

page 65 } Q. It does go across the William T. Watson land?

A. Yes, sir, it does.

Q. Is there any cleared land,—the first time you can recall was there any cleared land near and to the West of the Canal?

A. Yes, sir, there is a cleared lot and that goes right to the Canal.

Q. Do you know how that lot was designated there, what it was referred to as?

A. They always called it Watson's back lot.

Q. Do you know whether the first time you can recall there was any fence near the canal?

A. Yes, sir, there was a fence there.

Q. Which side of the canal?

A. To the West.

Q. Did that fence enclose the back lot, or not?

A. Yes, that enclosed the back lot.

Q. It went all around it, did it

A. Yes. I might be mistaken. It might not have went to the South, but I think it closed it all in.

Q. What kind of a fence was that, if you can recall?

A. I cannot say exactly. I think it was a log fence, but how

it was built I couldn't tell you, whether it was a worm fence or straight fence.

Q. Have you been there and seen in the Northwest corner of that lot what we have been referring to as the tar pot?

A. Yes, there used to be a shack there that a darky lived in.

Q. Is there any more cleared land there today
page 66 } in that back lot that you can recall?

A. No, sir, it was all timber, all but that back lot.

Q. Is there any more cleared land today in the lot that you have referred to as the back lot than there was when you first can recall that lot?

A. No, sir.

Q. Is it about the same size now as then as far as the cleared land?

A. Yes.

Q. What was the character of the land West of the back lot?

A. That was woodland, all woodland.

Q. How far West did the woodland extend?

A. To the Keas land.

Q. To what is now Mr. Keas' land?

A. Yes.

Q. What is known as Willow Street went through that timber?

A. Yes. But it wasn't no timber there when Willow Street was there, nothing but a path.

Q. Captain Jester has testified he built some camp meeting shacks. Where were they with reference to Willow Street?

A. Just to the East of where Willow Street goes.

Q. From the land not occupied by Mr. Keas going West, what was the character of that land, cleared land or timbered land?

A. I can't say. It wasn't cleared land, it wasn't tended land. When Captain Porter bought it he rented it out, but I never saw no land tended there.

page 67 } Q. Nor was there any timber on it?

A. It was up to what we called Beef Hill and to where Captain Porter bought he come to this solid timber.

Q. What I am trying to find out is from the property Porter bought, coming back toward what is now the Main Street of Chincoteague, was it cleared land or timber land?

A. I think that was cleared land. There was no trees growing on it when Porter bought it.

Q. Was there any fence around the Homestead house?

A. Yes, there was a log fence around it.

Q. Did that go from Cleveland to Mumford Streets, or what is now Cleveland and Mumford Streets?

A. No, sir.

Q. Did it encircle the house?

A. Yes, went around the house, and I think a garden to the East of the house.

Q. Was there any timber between the fence going around the old homestead property and the Channel?

A. Yes, it was some six or seven big trees there. I don't know how many.

Q. Since you can first recollect was there any fence on the William T. Watson tract of land except the two fences you have referred to, one West of the canal glade and one going around the homestead?

A. That is all the fences ever I knowed of.

Q. And you have known it how long?

page 68 } A. I have known it since I went to Chincoteague.
I lived right near it. I lived near Capt. Jim Tracy.

Q. That property was adjacent to the William T. Watson tract and South of Cleveland Street

A. Yes, sir.

You gentlemen take the witness.

CROSS EXAMINATION.

J. Brooks Mapp:

Q. Captain Fletcher, was there any cleared land East of what you have referred to as the canal?

A. No, sir.

Q. None at all?

A. Not to the East of the canal.

Q. To the West of the canal there was this lot we are talking about. Was that cleared land or timber land?

A. Cleared land.

Q. Did it have any big timber on it?

A. No, sir, the big timber was to the West of it.

Q. What I am asking about is this main lot here West of the glade? Was that cleared or what?

A. That was cleared land. That was called the Watson back lot.

Q. Who did you ever hear call it that?

A. I couldn't tell you. That was what it was known by. Everybody, I guess.

Q. What was there separating what you have referred to as

the back lot from the William T. Watson home-
page 69 } stead?

A. There wasn't nothing, only timber. There was a lot of timber.

Q. Did a glade separate it?

A. There was a glade there just to the West of this lot.

Q. In other words, there was a glade on both sides of the lot?

A. Yes, the canal was one glade.

Q. Speaking of the canal, has that canal been cut through there and cleaned out in your time?

A. I know when it was dug.

Q. Was anything there before it was dug?

A. Nothing but a glade.

Q. Was there a glade there before it was dug?

A. Yes.

Q. When was it dug?

A. I couldn't tell you when, but I know who superintended having it dug, that was old man John Tyndall.

Q. Was that thirty or forty years ago?

A. It was before I was married, and I have been married sixty-four years.

Q. You say there was another glade that went through West of the canal?

A. West of this lot.

Q. And there was a glade that went through it? What was between that glade when you first remember and the William T. Watson homestead?

A. It was solid woods land up to the place I told you was what is called Beef Hill.

page 70 } Q. What was there between there and the Watson homestead?

A. It was a grave yard there not very far from the homestead, and then the other land,—it wasn't tilled land. It was never fenced.

Q. What I am getting at,—I understood from Captain Jester that between the grave yard and this first glade there was a vacant lot there?

A. Yes.

Q. About how big was that lot?

A. It was vacant. I never seen it tended.

Q. Did you ever see the back lot tended?

A. Yes, I have seen that tended. There was a darky lived on it. I have seen corn growing there.

Q. You are certain of that?

A. Yes.

Q. And you moved there when you were fourteen?

A. Yes.

Q. That is all.

A. Yes.

BENJAMIN SCOTT,

a witness on behalf of the plaintiffs, being first duly sworn,
testified as follows:

By Mr. Gunter:

Q. Where do you live?

A. I live on Chincoteague.

Q. How long have you lived on Chincoteague?

A. I went there in '62.

Q. How old are you?

A. Ninety-four.

page 71 } Q. Mr. Scott, are you familiar with the property
on Chincoteague known as the William T. Watson
property?

A. That is what people has told me since I been there. Only
what the old people have told me.

Q. What was the Eastern boundary of that property, as
you have been told?

A. The dividing line that divides the Eastern side and the
Western.

Q. Known as the Splitting Line?

A. Yes.

Q. What is the Southern boundary?

A. It is bounded on to what used to be the old Captain Rob-
ert Snead property.

Q. Is there anything separating the Snead property from
the Watson property now?

A. Only a street.

Q. What is that street called?

A. Cleveland Street.

Q. Where does Cleveland Street begin at?

A. It come right down on the Watson property from the
Main Street out as far as it goes to the Bay.

Q. What is the Northern boundary of it?

A. Mumford Street, it is called.

Q. What is the Western boundary?

A. Chincoteague Channel.

Q. Mr. Scott, have you ever known any part of the William
T. Watson property to be called the back lot, the
page 72 } Watson back lot?

A. Yes, sir.

Q. Where is that?

A. Right where the tar kettle stands now. That stands in the Northeast corner of the lot.

Q. What is the Southeastern boundary of this back lot?

A. That bounds on Cleveland Street.

Q. I mean the Southeast one?

A. That is all one piece of land, only it is a high piece of land. The rest of it goes into glades.

Q. Is there a glade that bounds this back lot on the Southeast?

A. Yes.

Q. Has there ever been any fence there in your day?

A. I remember when I got out of the army being back there. There was a lot fenced in there. That was this lot known as the back lot, with a little house built on the Southeast corner of the lot on Cleveland Street side.

Q. What was that glade known as, if you know any name for it?

A. I never heard any name for it.

Q. What is it called now?

A. I don't know of anything it is called, only a glade.

Q. They still call it the glade?

A. Yes.

Q. Was it dug out?

A. There was a canal, they call it, that runs through it. I hoped dig that myself.

Q. That is the Southeastern boundary of this back lot, isn't it?

A. Yes, sir.

page 73 } Q. When was that dug out, Mr. Scott, as well as you can remember?

A. I think it was the third year after the War broke up.

Q. Making it about 68 years. Mr. Scott, was this lot ever enclosed?

A. This back lot was. They had their corn and stuff in there and they had to have it closed because the stock all run out and they had to keep the stock out.

Q. What sort of a fence was it?

A. A post and cap, the best I can remember.

Q. Mr. Scott, do you know where the old William T. Watson residence was on this property?

A. Yes, sir.

Q. Where was that?

A. That stood just on the Southern end of the,—just a little way from where the Hotel was built. When I come here there was a lot of pines all around it.

Q. Was that property enclosed?

A. The house and a garden was.

Q. What did it have around it?

A. I couldn't tell you. I never noticed enough for that.

Q. Did it have a fence?

A. It had a fence of some kind. A wooden fence.

Q. Did that fence go from Cleveland Street on the South to Mumford Street on the North?

A. No, sir, it just fenced in the house and a yard and a small garden.

Q. What was the character of land between that page 74 } residence, the William T. Watson residence that was enclosed, and the back lot to which you have referred?

A. It was a little clear lot back—it went back to where Mr. Keas lives now, with a few pines and willows on it and then took into a kind of swamp. That was in the glade part after you pass Mr. Keas' house, and then went up on kind of a knoll and commenced a pine thicket that went to the back lot.

Q. Did you ever at any time in your life know of any of that land between the William T. Watson residence that was enclosed with a fence and the back lot to be in cultivation?

A. No, sir, not until Captain Ken Porter bought it. He fenced it in and raised a garden.

Q. I may have asked you this question before, but I am going to ask you again. Did you ever know of any fence on the William T. Watson property except the fence that enclosed the back lot and the fence that enclosed the William T. Watson home?

A. No, sir. All the fence I know of is where he fenced in his house, yard and a small garden. That is all the fence I know anything about.

CROSS EXAMINATION.

By G. Walter Mapp:

Q. How much was enclosed in the house and yard and garden?

A. I couldn't tell you about that. I just know it was fenced in.

Q. It was just a small piece, wasn't it?

A. It was just what you might call a small family garden and front yard.

Q. How far was that from the first glade?

page 75 } A. It was quite a distance.

Q. Where is the first glade?

A. The first glade is to the East of Mr. Keas' house.

Q. You say you were fourteen when you come down there, or you come down in 1862. Where were you raised?

A. Hog Island.

Q. And you spoke of coming back from the War. What year did you get back?

A. I got back in '65.

Q. So you never knew Mr. Watson?

A. No, sir, I never knew Mr. Watson. He was dead. All the information I got from the land was widow. I lived neighbor to her a couple of years and her father used to take me out and show me the boundaries of all the land on there in those days.

Q. How many glades are there across the Watson land?

A. With the glade that is back of Mr. Keas', the small glade, I think there is three before you get to the—, ridges and glades on the back.

Q. Where is Beef Hill?

A. That was right there somewheres close to where Mr. Keas lived,—right in there back on that ridge there. It is Northeast of his house.

Q. And you say that fence they have been talking about is a post and cap fence?

A. Yes, sir.

Q. Who had that canal dug?

A. The Island.

Q. You helped dig it?

page 76 } A. Yes, sir.

Q. Which one of the glades was that dug across, starting from the Western side?

A. That was dug in the first glade on the back of this back lot.

Q. Start from the West side of this lot.

A. It was on the Eastern side of that back lot.

Q. Starting from the Street which glade was it dug down?

A. I don't know the name of the glade.

Q. Just give the number.

A. It is the first glade after you got back of this back lot.

Q. All right, you still have the back lot in your mind?

A. I am going to hold it there, too.

Q. Start at one end of the lot and tell me.

A. It was the first glade you come to after you get down there.

Q. Get down where?

A. To the Eastern part just inside of the Watson boundary.

Q. On the Eastern side it is the first glade you come to?

A. Yes, sir.

Q. That is all.

WILLIAM C. BUNTING,

a witness on behalf of the plaintiffs, being first duly sworn,
testified as follows:

By Mr. Gunter:

Q. Your name is William C. Bunting?

A. Yes, sir.

Q. How old are you?

A. 68.

page 77 } Q. Where were you born and raised?

A. Chincoteague.

Q. Are you familiar with the land known as the William T. Watson tract?

A. Yes, sir.

Q. Do you know the Eastern boundary of that tract?

A. Yes, sir.

Q. Go ahead.

A. Splitting line.

Q. Southern boundary?

A. That is Cleveland Street.

Q. What is now Cleveland Street?

A. Yes, sir. There wasn't no street there when I was a boy.

Q. Western boundary?

A. Chincoteague Channel.

Q. Northern boundary?

A. Munford Lane, or Mumford Street.

Q. What is now Mumford Street?

A. Yes, sir.

Q. In other words, Mumford and Cleveland Streets have been recently opened?

A. Yes, sir.

Q. Mr. Bunting, do you recall the William T. Watson homestead?

A. Yes, sir.

Q. Where was that with reference to Earl Watson's house now?

A. It was about to the back fence. He has some of it, I think, fenced in.

page 78 } Q. What direction is that from Main Street?

A. Southeast.

Q. Do you recall a fence around there?

A. Yes, sir.

Q. How close did that fence come to Main Street?

A. I should think it was about sixty feet—His front fence, from where Main Street is now.

Q. Did that fence continue from what is known as Cleveland Street through to Mumford Street?

A. No, sir.

Q. About how much land did that enclose?

A. A very small plat. It was a small place, had four or five big pines in the front yard and had a back garden and that run very near the grave yard. And that grave yard was fenced in when I was young, but they sold the graveyard and hauled it away and brought it to the Chesapeake Bay for ballast.

Q. Are you familiar with the lines of the property now claimed by R. A. Keas?

A. Yes.

Q. About how far would you say the graveyard was from the R. A. Keas' property?

A. 100 yards.

Q. Going East from the graveyard what is the first glade that you strike?

A. The first glade is just before you get to Mr. Keas' property. He owns property on both sides now. He owns the glade now. The property he bought from Mat-
page 79 } thews is the first property he bought at the auction sale.

Q. The property at the auction sale, is that the same as sold by N. B. Westcott, Special Commissioner?

A. Yes.

Q. That is the tract on which the house stands?

A. Yes.

Q. Going East what is the next glade you come on?

A. Another glade adjoining to Beef Hill. That went through the Watson property too. That is two.

Q. With reference to the Keas house where was that glade?

A. Southeast of his property. Between his property and Willow Street.

Q. Going East from that glade what is next?

A. When you pass the negro church you pass another glade. That is the third glade before you get to the back lot.

Q. Three glades between what is now Main Street and the lot which you have referred to as the back lot?

A. Yes, sir, three glades there and two more yet to come.

Q. How many glades East of the last glade?

A. Two. One the canal and another cross to the Splitting Line. That makes five glades altogether.

Q. Do you recall the piece of land adjacent to and West of the glade now known as the canal, which has been referred to as the tar pot lot?

A. Yes, sir.

page 80 } Q. Did you ever hear that referred to in any way, or designated in any way?

A. We had it for a baseball ground after Dr. Smith got it. He run a fence and charged admittance for the ball game.

Q. Did you ever hear that referred to as anything?

A. No, I can't say I did.

Q. When you can first recall was there any fence around the cleared land, or any part of it?

A. Yes, sir, there was a fence around one part of it. A little went down to a negro settlement on the Southeast and it was a log and rider fence, and I think some stake fence along the line. The negroes burned them logs and Dr. Smith had to put a wire fence.

Q. Did that wire fence run around the same place?

A. Yes, sir.

Q. Was there any fence down the Watson side of it known as the canal?

A. Yes, sir. You can go there and see the cedar stops where it went.

Q. Is there much difference in the size of that back lot cleared land today and when you first recollect?

A. I wouldn't like to say about that. I never took that much notice.

Q. Leaving that piece of cleared land coming West, what was the character of the land just West of it?

A. Just West of that there was a big pine thicket and two or three gum trees we used to shoot robins offen, and then the Northwest side where Willow Street is there was a place where they had a camp meeting when I was be-
page 81 } between six and seven *year* old, and I have the scar on me yet from that camp meeting.

Q. How far West of Willow Street did the timber extend?

A. Just about to Mr. Keas Southeast line. There was a ridge there and old man Jim Thornton cut the timber and sold it for ballasts.

Q. From the Southeast line of Mr. Keas', going toward what is now Main Street, what is the character of that land?

A. Joe English had to cut down big pines to build his hotel there.

Q. Was there any cleared land between the Southeast line of the Keas property and Main Street?

A. I always remember we would play ball on that lot where

Mr. Keas was and there wasn't no pines there, but there was no fence around there so far as I saw.

Q. Take the witness.

CROSS EXAMINATION.

By J. Brooks Mapp:

Q. Captain Bunting, you say it was your recollection that you played ball on what is now The Keas lot?

A. Yes.

Q. And West of the Keas lot was the glade?

A. Yes, sir.

Q. That was the first glade you hit when you start on the Main Street and go East?

A. Yes, sir, that is the first one.

Mr. Gunter: Stand aside.

WILLIAM WATSON,

a witness on behalf of the plaintiff, being one of the plaintiffs, testified as follows:

page 82 } By J. Harry Rew:

Q. What is your name?

A. William L. Watson.

Q. You are a son of Jesse R. Watson?

A. Yes, sir.

Q. When did your father die?

A. November 27, 1931.

Q. Please name his children living at the time of his death?

A. Mary Holland, John Watson, Jesse Watson, Grover Watson, Earl Watson, Emma Beebe and myself.

Q. Mr. Watson, are you familiar with the lot or parcel of land now owned and claimed by R. A. Keas?

A. Yes, sir.

Q. Is that or not a part of the William T. Watson land?

A. Yes.

Q. Have you or any of your brothers and sisters in any way parted with or disposed of their interest in that lot or parcel of land?

A. No, sir, they haven't.

Q. Mr. Watson, is R. A. Keas still in possession of that lot or parcel of land?

A. Yes, sir.

Q. The plat shows that Mr. Keas has two lots or parcels

of land, one extending from Cleveland Street to Mumford Street, and the other extending from Cleveland Street to the land owned by the town of Chincoteague.

A. Yes, sir.

Q. Is he still in possession of both of those lots as shown on this plat?

A. Yes, sir.

page 83 } Q. Take the witness.

CROSS EXAMINATION.

By J. Brooks Mapp:

Q. How long have you lived on Chincoteague?

A. All my days.

Q. Were you living there at the time Mr. Keas bought this property?

A. Yes, sir.

Q. Do you remember the time?

A. Yes, sir. I wasn't present when it was bought, but I remember the time.

Q. You knew it was going to be sold at the time?

A. Yes, sir.

Q. Sold by the late Judge Wescott?

A. Yes, sir, I reckon so.

Q. Did you understand that at the time?

A. Yes, sir.

Q. All you know about the boundaries is what you have been told?

A. What my mother and father have told me and the old people have told me.

Mr. Mapp: That is all.

By Mr. Geo. L. Doughty: If your Honor please, may we recall Capt. Ben Scott for a question we failed to ask him?

By the Court: Yes, sir.

BENJAMIN SCOTT,
recalled to the stand.

By Mr. Gunter:

Q. Mr. Scott, did you ever know anything about how the widow's dower was laid off in this tract of land?
page 84 } A. Yes, sir. It was from the Channel—

By J. Brooks Mapp: It seems to me there is publicly

recorded evidence of that, and that would be the best evidence of that.

By the Court: Is there any record evidence of it?

By Mr. Doughty: We have a record of it if these gentlemen want it in there, but it would come under the same ruling of a copy of a copy.

By the Court: I will admit his testimony.

By Mr. J. Brooks Mapp: We save the point.

Mr. Gunter (Contd):

Q. Where did it begin and where did it end?

A. It run from the channel right straight out, a small streak, to the splitting line, taking in where the prison is built now (the look up, they call it).

Q. This is designated as the "Town of Chincoteague" there, and is the jail? Was that a part?

A. Yes, sir. There was a strip of land that run from the shore, so the widow told me, to the Splitting Line.

Q. The Splitting Line is there and here is the Channel. (Indicating.) So it began at the Channel and a small strip back to the Splitting Line.

A. That is what the widow told me.

Q. And that was on the Northern part of the tract?

A. And that is the tract she sold Capt. Ken Thornton.

Q. Was that North of the Keas tract?

A. Yes, sir, right on Mumford Street.

page 85 } Mr. Gunter: Any questions, gentlemen?

Mr. J. Brooks Mapp: No questions.

Mr. Gunter: That is our case, if your Honor please.

Mr. J. Brooks Mapp: Mr. Sheriff, will you call the defendant's witnesses and swear them?

DEFENSE TESTIMONY.

R. A. KEAS,

the defendant in this action. being first duly sworn, testified as follows:

By G. Walter Mapp:

Q. Your name is Robert A. Keas?

A. Yes.

Q. Are you the defendant in this case?

A. Yes, sir.

Q. Mr. Keas, I hand you the original deed from N. B. Wes-

cott, Special Commissioner, dated October 13, 1919, and ask you if that is the deed by which you received title to your house and lot on Chincoteague?

A. Yes, sir.

Q. The house was built on the lot and it was the house and lot which you bought?

A. It has been rebuilt since then, but it was a house and lot when I bought it.

Q. I hand you also the original deed from Jesse Watson and Mary C. Watson, dated May 8, 1885, and ask you if that is the deed for the same house and lot?

A. Yes, sir. This is the same one.

Mr. Mapp: We desire to offer these original deeds in evidence as Defendant's exhibits 1 and 2.

page 86 } Q. I hand you a paper signed J. Caulk, either
Sr. or Surveyor.

A. This is the plat.

Mr. Gunter: If your Honor please, we don't think there is anything in the world here to identify that plat, and we object to it in the present form.

Mr. J. Brooks Mapp: If your Honor please, the man's name is signed to it.

Mr. G. Walter Mapp: It gives the diagram and the dimensions and is the same land as embraced in the Porter deed.

By the Court: What is the objection to it?

Mr. Gunter: We think it should be identified. There isn't a soul in the world to say that was Mr. Caulk's handwriting. Mr. Ruediger said something about having got it from a man named Porter.

J. Brooks Mapp: And Porter owned the property.

G. Walter Mapp: It is referred to in the Porter deed.

By the Court: I understood Mr. Ruediger to say Mr. Caulk was a surveyor.

Mr. Gunter: He isn't a County Surveyor.

By the Court: I don't see any objection to it?

Mr. Gunter: We desire to save the point.

By the Court: You gentlemen have to connect it up to show it is a plat of this land. If you don't it isn't evidence.

G. Walter Mapp (Contd.):

Q. How did you get this plat?

A. Mr. Wescott gave it to me along with the original deed.

G. Walter Mapp: We offer that as defendant's exhibit 3.

page 87 } A. (Contd.) If I am allowed to speak, Mrs. Porter told me that that was given to her—

Mr. Doughty: If your Honor please, it seems to me we have hearsay, what Mrs. Porter told him.

By the Court: To a certain extend that is true. But here is a plat offered as a plat of a piece of land that they are attempting to identify. Mr. Keas said the Special Commissioner gave it to him with the original deed, and he wants to go further and explain.

By the Court:

Q. Mr. Keas, are these people living that gave you this information?

A. No, sir, but they were living then. Mr. Porter wasn't living, but his wife was and she said this plat was given by the man and his wife that got Mr. Caulk to draw it when the deed was drawn, and when they bought the property.

Q. You have been in possession, and I believe you have lived on this property ever since?

A. Yes, sir.

Q. Did you buy it at public auction?

A. Yes, sir, I bought it from Mr. Wescott at a Commissioner's sale.

Q. Paid for it and he gave you a deed for it?

A. Yes, sir.

Q. Was any question—

A. Mr. Wescott told me himself that was as good a deed as ever was drawn.

Mr. Gunter: I object to that.

By the Court: Objection sustained. Gentlemen page 88 } (addressing the jury) don't consider that.

G. Walter Mapp (Contd):

Q. Mr. Keas, how long have you lived on Chincoteague Island?

A. 33 years.

Q. You bought this home in '19?

A. Yes, sir.

Q. How close to your house is there one of these glades in question?

A. I should judge it is about 200 yards, something like that—the one to the West of the home.

Q. The first glade is to the West?

A. Yes, sir.

Q. The next to the West?

A. Yes, sir.

Q. Your house and lot, the part we are talking about, lies right between the two?

A. Yes, sir.

Q. Do you know where the old graveyard was that Mr. Mumford, or somebody, hauled away?

A. Yes, sir, and a good portion of that was there when I moved to Chincoteague and some old trees stood on it.

Q. Where were they with reference to this first glade—on the same side of the house?

A. Between the glade and the channel.

Q. How far from the glade?

A. I should judge it is 150 or 200 yards, sir. It was right close to the back of where one of the Watson boys
page 89 } live now. They told me it was in Chincoteague Bay, the bodies as well as the sand.

Q. Between the graveyard and the glade what was the character of that land, when you first remember?

A. Just barren land with exception of a few trees on the graveyard.

Q. Was there ever a fence that you remember along the side of that first glade?

A. No, sir.

Q. There wasn't a fence so far as you remember?

A. No, it wasn't any fence when I went there.

Q. Then it has been testified to that over by the canal, whatever they call it, and the back lot there was a fence. Do you remember any fence over by the canal?

A. No, I don't know anything about that. I don't suppose I had any reason to go there for many years after I moved there. No, sir, and I don't remember it being tilled.

Q. Was there any fence around the homestead when you first knew it?

A. No, sir.

Q. Had the homestead been moved when you first went there?

A. Yes, sir.

Mr. Mapp: You gentlemen take the witness.

CROSS EXAMINATION.

By Geo. L. Doughty:

Q. Where did you live on the Island before you bought this property?

page 90 } A. Lets see. Do you know where the pool room is now?

Q. I know, but the jury doesn't.

A. That is where I lived from the time I moved to Chincoteague until 1919 when I bought this other property and moved there, and that was about 1898, I should say.

Q. How far was that from the street now known as Mumford Street?

A. I guess it was only about 60 to 75 feet.

Q. Your place of business was 300 to 400 yards North of your home at that time?

A. No, my place of business at that time was down the Street on the Channel. I was in the oyster business. When I left the oyster business I went in the store business, on the 5th day of February, 1902.

Q. And that was about 300 or 400 yards North of the Street?

A. I guess it must be 400 yards, yes, sir.

Q. Are you acquainted with the tract of land known as the William T. Watson tract?

A. Yes, sir, I know something about part of it. I don't know enough about all of it to tell you, only what was told me. I never made no measurements.

Q. What part of it were you told about?

A. I was told about the part that is along the Main Street, the Shore front.

Q. How far back toward Willow Street did you know the William T. Watson land went?

A. I know further than that, but I didn't know where the dividing line was *line was*.

page 91 } Q. Did you ever hear up until this property was sold and bought by you that that tract of land was entailed land?

A. Until George Watson passed out and that went to Jesse in fee simple. Mr. Wescott told me that that deed was as good as could be given, because that was the reason why.

Q. Was that before or after you bought it?

A. That was the day I bought it.

Q. Before or after the sale?

A. Before I bought it I was asking him the question.

Q. What questions were you asking him?

A. I asked him about this deed which Jesse Watson and his wife gave to Mr. Porter and his wife, and he said when George Watson died that in a portion of the land that went to Jesse Watson in fee simple. That is what he told me.

Q. Up until that time had you ever heard it said it was entailed land?

A. I expect I have. I never paid any attention to it.

Q. It was a matter of general knowledge on the Island?

A. I don't know whether it was general or not. It was spoken of quite often.

Q. So you did know before you bought this land that it came from Jesse R. Watson, didn't you?

A. No, it came from William Watson.

Q. I thought you spoke of a deed from Jesse R. Watson to Porter.

A. Yes, sir.

page 92 } Q. So you did know Jesse R. Watson was in that line of title?

A. He was in that line of title and owned it then, but he got a fee simple right to sell it when George died.

Q. And you were told that before you bought it?

A. Yes, sir.

Q. Was there any announcement made at the sale?

A. I don't know of any. It was a Commissioner's sale and was sold just as Mr. Porter bought it.

Q. You were there?

A. Yes, sir.

Q. Was there any announcement made by the Special Commissioner?

A. Never heard any.

Q. Didn't he announce at the sale that he was selling just what title he had?

A. He said he was selling and would give a deed the same as Mr. Porter had.

Q. How much of the land which you are now in possession of did you get by that deed?

A. It was supposed to be an acre and a half, more or less.

Q. Did that include all you are holding?

A. No, sir.

Q. What else?

A. One-third of the Capt. Jim Mumford lot.

Q. How did you get that?

A. From his son.

Q. By a deed?

A. Yes, sir.

page 93 } Q. Deed on record?

A. No, sir.

Q. Where is that deed?

A. It was more of a sale than it was a deed.

Q. You say that is for one-third interest?

A. Yes, sir.

Q. Who claims the other two-thirds of that?

A. Capt. Bill Bunting's wife and Capt. Mumford's widow.

Q. Have you been exercising control of that land?

A. Yes, sir.

J. Brooks Mapp: As to this piece of land, we would like to serve notice that they are making Mr. Keas their witness.

By the Court: All right, sir. The attorneys for the defendant object to this line of testimony unless you make him your own witness and I will sustain their objection.

Mr. Doughty: Stand aside, Mr. Keas.

Mr. J. Brooks Mapp: If your Honor please, we *desire* next to offer in evidence the following papers out of the Chancery record as Exhibit 4. I have them all here, but I think these are the only ones that have any bearing on it. In the Chancery suit of *Thos. B. Birch vs.—In Chancery—Joshua W. Birch, et als.*

Mr. Gunter: We would like to call your attention to the fact that in that suit the Watson's weren't connected in any way, shape or form.

By the Court: Is that the suit under which the land was sold by Judge Wescott? Are you objecting to that?

Mr. Gunter: Yes, sir, we object to that for that reason.

By the Court: I will permit you to introduce it.
page 94 } Mr. Gunter: We save the point.

Mr. J. Brooks Mapp: I would like to say that we have all of the papers in this suit and have no objection to the attorneys for the plaintiffs offering any of same that they think necessary, but I think that we are going to introduce all that are necessary. The first one is the bill, which I will read, as follows:

EXHIBIT 4.

(1). BILL.

“To Hon. James H. Fletcher, Jr., Judge of the Circuit Court for the County of Accomack, State of Virginia:

Your complainant, Thomas B. Birch, humbly complaining, sheweth unto your Honor the following case:

That Amy Porter departed this life, intestate, on the 11th day of May, 1918, at her home on the Island of Chincoteague, in the County and State aforesaid, seized and possessed of the

following described real estate situate upon said Island, in said County and State, more particularly described as follows, to-wit:

(1). All that certain lot, piece or parcel of land situate in the town of Chincoteague, County and State aforesaid, whereon was erected the residence of the said Amy Porter, containing One and one-half acres (1 1/2 A.), surveyed by J. Caulk, Surveyor, on May 7, 1875, with the following boundaries given as of that survey: "Beginning in the road near the Northeast gate of Mrs. Tracey's yard in the road, thence by and with Jesse Watson's land to the Widow's Dower N. 54 1/2, E. 12.75 P., thence along said Widow's Dower to the woods S. 41 E. 13.8 P., thence by and with said Watson's woodland to the aforesaid road near Mrs. Wm. Whealton's fence at a stone in said road S. 58 1/2, W. page 95 } 17.3 P., thence along said road to first beginning stone in road near said Mrs. K. Tracey's gate containing 1 1/2 acres; the said lot being bounded at this time on the Northeast by the lands of Cyrus R. Cropper's heirs; Southeast, by the land of Libbie Reed; Southwest by the lands of Major Kelley and Frank Blake, and Northwest, by the lands of Robert W. White and James Powell.

2. An undivided one-half interest in and to a certain lot, piece or parcel of land on the North end of Chincoteague Island, County and State aforesaid, containing One Acre (1 A.), more or less, and bounded on the Northeast by the land of George C. Birch's heirs; Southeast, by the land of William T. Lewis' heirs; Southwest, by the land of Maria Bowden's heirs, and Northwest, by the land of Reuben Jester;

That the said Amy Porter left surviving her, two brothers, Joshua W. Birch and your complainant; six neices, to-wit: Josephine C. Seorah, Flora Rowe, Mary M. Whealton, Mary J. Bowden, Alice Mason and Annie M. Derrickson; four nephews, to-wit, John S. Birch, Daniel Bowden, Joshua T. Bowden and Frank Bowden; eight grand-nephews and neices, towit, Ebbe T. Bowden, Ernest D. Bowden, Paul Bowden, Irving Bowden, Lloyd Bowden, Charles Bowden, Welden Cropper and Frances Cropper, the last two of whom are infants under the age of twenty-one years, her only heirs at law and distributees.

That the said real estate is not, as complainant believes, susceptible of partition among the parties entitled thereto, and should the same not be divisible in kind, complainant be-

lieves and here states that the interest of those who are entitled to the said real estate, or its proceeds, will
 page 96 } be promoted by a sale of the whole of the same,
 or by an allotment of part and a sale of the residue;

That your complainant qualified as Administrator of the personal estate of the said Amy Porter, deceased, before the Clerk of said Court on the 16th day of May, A. D. 1918.

That complainant will ask the Court for an allowance of a reasonable counsel's fee to his attorney for the institution and conduct of this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises save by the aid of a court of equity, he prays that the said Joshua W. Birch, Josephine C. Scolah, James Raymone Rowe and Flora Rowe, his wife, in right of said wife, Mary M. Whealton, Mary J. Bowden, Alice Mason, Annie M. Derrickson, John S. Birch, Daniel Bowden, Joshua T. Bowden, Frank B. Bowden, Ebbe T. Bowden, Ernest D. Bowden, Paul Bowden, Irving Bowden, Lloyd Bowden, Charles Bowden, Welden Cropper and Frances Cropper, the last two of whom are infants under the age of twenty-one years, may be made parties defendant to this bill and required, but not on their oaths, to answer the same, the oaths being hereby expressly waived, the said adults in their own proper persons and the infants by guardian *ad litem*; that a proper guardian *ad litem* may be appointed for said infant defendants by the Clerk at Rules, who shall also answer this bill; that the said Administrator may be required to make up and settle his account as such Administrator of said deceased person in this suit; that proper process may issue; that the said real estate be divided among the parties entitled thereto, or else, if it cannot be so divided among the parties that it may be sold and the proceeds divided
 page 97 } among the parties according to their respective rights; that all proper orders and decrees may be made, accounts taken and inquiries directed; and that your complainant may have all such further and other and general relief in the premises as the nature of his case may require, or to equity shall seem meet.

N. B. WESCOTT, p. q."

By J. Brooks Mapp: The next paper we would like to introduce is a decree in this same suit referring the cause to a Commissioner in Chancery. This was entered October 15, 1918, by Judge James H. Fletcher, Jr., as follows:

2. DECREE REFERRING CAUSE TO COMMISSIONER
IN CHANCERY.

“In the Circuit Court for the County of Accomack, Virginia.

Thomas B. Birch (Pltff.)

vs.

Joshua W. Birch, Josephine C. Seorah, James Baynard Roe and Flora Roe, his wife, in the right of said wife, Mary M. Whealton, Mary J. Bowden, Alice Mason, Annie M. Derrickson, John S. Birch, Daniel Bowden, Joshua T. Bowden, Frank B. Bowden, Ebie T. Bowden, Ernest D. Bowden, Paul Bowden, Irving Bowden, Lloyd Bowden, Charles Bowden, Weldon Cropper and Frances Cropper, the last two of whom are infants under the age page 98 } of twenty-one years (Defts.).

In Chancery.

It appearing to the Court that an order of publication against the defendants, James Baynard Roe, Flora Roe, John S. Birch, Lloyd Bowden, Weldon Cropper, Frances Cropper, Mary J. Bowden, Frank B. Bowden and Charles Bowden, has been issued, duly posted and published, and that though more than fifteen days have elapsed since such publication was completed, the said defendants, James Baynard Roe, Flora Roe, John S. Birch, Lloyd Bowden, Weldon Cropper, Frances Cropper, Mary J. Bowden, Frank B. Bowden and Charles Bowden, still fail to appear, on motion of plaintiff, by N. B. Wescott, his attorney, it is ordered that this cause may be heard as to the last named defendants.

And it further appearing that S. James Turlington, a discreet and competent attorney, was appointed by the Clerk at Rules as guardian *ad litem* for the infant defendants, Weldon Cropper and Frances Cropper, on motion of the said S. James Turlington, leave was granted him to file the answer of the said infant defendants by guardian *ad litem*, and the same was filed accordingly, to which the plaintiff replies generally.

Then this cause came on this day to be heard upon the plaintiff's bill, taken as for confessed as to the defendants, Mary M. Whealton, Alice Mason, Joshua W. Birch, Josephine C. Seorah, Annie M. Derrickson, Daniel Bowden, Irving Bowden, Joshua T. Bowden, Ebie T. Bowden, Ernest D. Bowden and Paul Bowden, the entries of the Clerk at Rules, the an-

swer of S. James Turlington, guardian *ad litem*,
page 99 } and the general replication thereto, and was argued
by counsel;

On consideration whereof, the Court doth adjudge, order and decree that the entries of the Clerk at Rules be, and the same hereby are, confirmed. And it is further adjudged, ordered and decreed that this cause be referred to one of the commissioners in Chancery of this Court, to take proof, ascertain and report to the Court as follows:

1. The title and interests of the complainant and defendants in and to the real estate mentioned and described in complainant's bill; the share or the part of the said premises belonging to each of said parties to this suit, and the nature and extent of their respective rights and interests therein.

2. Whether partition of said premises can be conveniently made; and if partition thereof cannot be conveniently made, whether either party will accept the entire subject and pay therefor to the other parties such sums of money as their interest therein may entitle them to receive; and if either party will accept the entire subject, what sums of money the other parties will be entitled to receive for their respective interests therein.

3. Whether the interests of all the parties will be promoted by the sale of the entire subject, or by an allotment of part and sale of the residue.

4. Also whether there are any delinquent taxes charged against said land, or any encumbrance or encumbrances upon the same, or any part thereof, and the dates and amounts of such encumbrance or encumbrances.

page 100 } 5. The fair rental value, as well as the fee
simple value of said real estate; and the said
Commissioner shall report any other matter deemed pertinent, or that may be required by the parties in interest to be reported.

And the Court reserves, etc."

By J. Brooks Mapp: The next, if the Court please, is the report of S. T. Ross, the late Judge Ross, Commissioner in Chancery, filed April 23, 1919. It has attached to it a copy of the decree, the evidence taken and then this report.

(3) REPORT OF S. T. ROSS, COM'R. IN CHANCERY.

“In the Circuit Court for the County of Accomack.

Thomas B. Birch, Pltff.,

vs.

Joshua W. Birch, et als., Defts.

In Chancery.

To the Hon. James H. Fletcher, Jr., Judge of said Court:

Pursuant to decree in this cause, entered on the 15th day of October, 1918, upon reference to me as one of the Commissioners in Chancery of the said court, proceeding under an order of publication as to the non-resident parties and due notice to the resident parties, etc., returned herewith, I proceeded on the 21st day of April, instant, to make the inquiries and investigation required by the decree and now report to the court as follows:

1. The parties entitled to the real estate mentioned and described in the plaintiff's bill are:

page 101 } 1. Thomas B. Birch,

2. Joshua W. Birch,

3. Josephine C. Secra,

4. Flora Roe,

5. Mary M. Whealton,

6. Mary J. Bowden,

7. Alice Mason,

8. Annie M. Derrickson,

9. John S. Birch,

10. Weldon Cropper,

11. Frances Cropper,

12. Daniel Bowden,
13. Joshua P. Bowden,
14. Frank B. Bowden,
15. Ebbie T. Bowden,
16. Ernest D. Bowden,
17. Paul Bowden,
18. Irving Bowden,
19. Lloyd Bowden,
20. Charles Bowden.

2. The title of the said parties to the said real estate in fee simple.

3. The said Thomas B. Birch, Joshua W. Birch, are entitled to an undivided one fifth, ($1/5$) each; the said Josephine C. Seora and Flora Roe are entitled to one fifteenth each; the said Daniel Bowden, Joshua P. Bowden, Frank B. Bowden, Mary J. Bowden, Alice Mason and Annie M. Derrickson are entitled to one thirty fifth ($1/35$) each; the said Ebie T. Bowden, Ernest D. Bowden, Paul Bowden, Irving Bowden, Lloyd Bowden and Charles Bowden are entitled are entitled to one two hundred and tenth each ($1/210$), the said Mary M. Whealton and John S. Birch are entitled to one tenth ($1/10$) each, and the said Weldon Cropper and Frances Cropper are entitled to one thirtieth ($1/30$) each.

4. The said real estate is not susceptible of partition in kind among the parties, according to their respective rights.

page 102 } 5. None of the parties has signified a willingness to accept the whole of the said real estate and pay therefor to the other parties such sums of money as their respective interest would entitle them to receive.

6. The interests of the parties would be promoted by a sale of the entire subject and distribution of the proceeds of

such sale among the parties according to their respective rights, rather than by an allotment of part and sale of the residue.

7. The fee-simple value of the said real estate is \$800.00, and the annual value is \$84.00, for the lot which has a house on it; the vacant lot has no annual value.

8. I have found no lien on the said real estate nor on either share of it.

9. I have found no delinquent taxes charged against the said real estate.

All which is respectfully submitted.

Given under my hand this 23rd day of April, A. D. 1919.

S. T. ROSS,
Com'r. in Chancery.

Costs:

Com'r for Notice & Reference	\$3.50
Stenographer, Miss E. L. Parts	2.20
Thos. B. Birch, witness & mileage	3.00
Lambert Jester, ditto	3.00

By J. Brooks Mapp: The Next, if the Court please, is the original decree entered by Judge Fletcher on June 3, 1919.

page 103 } (d).

“In the Circuit Court for the County of Accomack, Virginia.

Thomas B. Birch

vs.

Joshua W. Birch, et als.

In Chancery.

This cause came on this day to be again heard upon the papers formerly read and the report of Samuel T. Ross, Commissioner in Chancery, filed herein April 23, 1919, to which report no exceptions have been taken, and was argued by counsel: On consideration whereof, it is adjudged, ordered and decreed that the said report of said Commissioner in Chancery be, and the same hereby is, ratified and confirmed.

And it appearing from the said report that the said real estate mentioned and described in complainant's bill is not susceptible of partition in kind among the parties according to their respective rights and interests, and that no one of the parties in interest has signified a willingness to accept the whole of the real estate and pay therefor to the other parties such sums of money as their interests would entitle them to receive, and that the interests of the parties would be promoted by a sale of the entire subject and distribution of the proceeds of such sale among the parties according to their respective rights, rather than an allotment of part and sale of the residue, it is further adjudged, ordered and decreed that N. B. Wescott, who is hereby appointed Special Commissioner for that purpose, after he shall have given bond in the sum of \$1,600.00, to be approved by
page 104 } the Clerk of said Court, do make the sale of said two parcels of real estate described in Complainant's bill, at public auction to the highest bidder, in front of the Hotel on Chincoteague Island, in said County and State after first giving at least twenty days' notice of the time, terms and place of such sale by printed or typewritten posters posted at the front door of the Courthouse and at three or more public places in the vicinity of the said real estate, upon the following terms, to-wit:

One-third of the purchase price to be paid in cash on the day of sale, with privilege of purchaser or purchasers to pay all or as much in excess of one-third thereof as he or they may elect; the unpaid portions of the purchase money to be divided into two equal instalments, evidenced by the bonds of the purchaser or purchasers, with personal security to be approved by the said Special Commissioner, payable in three and six months, respectively, from date of sale, bearing interest at the legal rate from date until paid; title to be reserved as additional security until entire purchase price shall have been paid; possession to be given on day of sale, and property to be at purchaser's risk from time of sale. And upon the payment of the whole of the purchase price and confirmation of such sale by the Court, the Special Commissioner is hereby authorized and empowered to execute and deliver to the purchaser or purchasers, deed or deeds, upon the same being properly prepared at expense of purchaser or purchasers, inclusive of the requisite Internal Revenue Stamps, and tender to the said Commissioner for execution.

And the Court reserves, etc.''

page 105 } By J. Brooks Mapp: The next that we desire
to introduce is a report filed by Judge Wescott,
as Special Commissioner. This was filed on December 11,
1919:

(e). REPORT OF SPECIAL COMMISSIONER.

“Virginia:

At a Circuit Court held for the County of Accomack, on the
25th day of October, A. D. 1919.

Thomas B. Birch, Pltff.,
against
Joshua W. Birch, et als., Defts.

In Chancery.

This cause came on this day to be again heard upon the papers formerly read, and the report of N. B. Wescott, Special Commissioner, this day filed, to which report no exception has been taken, and was argued by counsel; On consideration whereof, the court doth adjudge, order and decree that the said report be, and the same hereby is, ratified and confirmed, and that the sales of real estate made by the said Special Commissioner be held firm and stable.

And it appearing from said report that R. A. Keas, who was the purchaser of parcel Numbered “1” at sale by said Special Commissioner, at the price of \$1,070.00, of which he paid the sum of \$356.67 in cash on the day of sale, the said Special Commissioner is ordered upon the payment to him of the balance of said purchase price, amounting to \$713.33, to execute and deliver a deed, with special warranty of title, unto the said R. A. Keas, upon the same being properly prepared at his expense, inclusive of the cost of Internal Revenue stamps, and presented to the said Special Commissioner for execution.

And it further appearing from said Special
page 106 } Commissioner’s report that Major W. Kelley, who
was the purchaser at said Special Commissioner’s
sale of parcel numbered “2”, for the sum of \$225.00, and
that he has paid the whole of said purchase price in cash
on the day of sale, and that the said W. M. Clark and A. J.
Derrickson were the joint purchasers at said Special Com-

missioner's sale of parcel numbered "3", for the sum of \$25.00, the whole of which was paid to the said Special Commissioner on the day of sale in cash, it is further ordered that the said Special Commissioner do execute and deliver unto said Major W. Kelley and unto Wm. M. Clark and A. J. Derrickson deeds, with special warranty of title, conveying unto them respectively, parcels numbered "2" and "3", upon the same being properly prepared at the purchasers' expense, inclusive of the cost of Internal Revenue stamps, being presented to him for execution.

And the said Special Commissioner shall make report to this Court of his proceedings hereunder.

And the Court reserves, etc."

In the Circuit Court for Accomack County, Virginia.

Thomas B. Birch

vs.

Joshua W. Birch, et als.

In Chancery.

To the Honorable James H. Fletcher, Jr., Judge of said Court:

The undersigned Special Commissioner begs leave to report his proceedings under and pursuant to a decree entered in this cause on the 15th day of October, 1919, as page 107 } follows:

R. A. Keas, purchaser of parcel No. 1 of the real estate of which Amy Porter died seised and possessed, upon notice being given him by the undersigned of the confirmation of the sale by the Court, and who had theretofore on the day of sale paid the sum of \$336.67, one-third of the purchase price thereof of \$1,070.00, paid unto the undersigned the balance of said purchase price, to-wit, the sum of \$713.33; and Major W. Kelley, and W. M. Clark and A. J. Derrickson, jointly, the respective purchasers of parcels Nos. 2 and 3 of said real estate, having paid the whole of the purchase prices thereof, to-wit, the sum of \$225.00 and \$25.00 respectively, to the undersigned on the day of sale, he made, executed and delivered to them, respectively, deeds to said parcels so purchased by them, as aforesaid, with special warranty of title, as by said decree directed; that the aggregate amount of said purchase

money which has come into the hands of the undersigned is \$1,320.00, from which has deducted \$35.40, his statutory commission, as well as the further sum of \$10.00 paid W. D. Steelman for his services as auctioneer, a voucher for which is herewith returned, and there remains in his hands the sum of \$1,274.60 for distribution among those thereto lawfully entitled as the heirs at law and distributees of the said Amy Porter, decd.

Respectfully submitted,

N. B. WESCOTT,
Special Commissioner."

July 12/19 Recd. of N. B. Wescott, Special Commr. for services in selling Amy Porter real estate in three lots this day the sum of Ten Dollars (\$10.00).

W. D. STEELMAN.

page 108 } By J. Brooks Mapp: The next we desire to offer is a decree entered by Judge Fletcher dated October 25, 1919, on the back of the decree being the usual entry "Enter this. J. H. Fletcher, Jr.," as follows:

(f.) DECREE CONFIRMING REPORT OF SPECIAL COMMISSIONER.

"In the Circuit Court of Accomack County, Virginia.

Thomas B. Birch

vs.

Joshua W. Birch, et als.

In Chancery.

This cause came on this day to be again heard upon the papers formerly read, and the report of N. B. Wescott, Special Commissioner, this day filed, to which report no exception has been taken, and was argued by counsel. On consideration whereof, the Court doth adjudge, order and decree that the said report be, and the same hereby is, ratified and confirmed, and that the sales of real estate made by the said Special Commissioner be held firm and stable.

And it appearing from said report that R. A. Keas, who was the purchaser of parcel numbered "1" at sale by said Special

Commissioner, at the price of \$1,070.00, of which he paid the sum of \$356.67 in cash on the day of sale, the said Special Commissioner is ordered upon the payment to him of the balance of said purchase price, amounting to \$713.33, to execute and deliver a deed, with special warranty of title, unto the said R. A. Keas, upon the same properly prepared at his expense, inclusive of the costs of Internal Revenue stamps, and presented to the said Special Commissioner for execution.

And it further appearing from said Special
page 109 } Commissioner's report that Major W. Kelley, who
was the purchaser at said Special Commissioner's sale of parcel numbered "2", for the sum of \$225.00, and that he has paid the whole of said *purchaser* price in cash on the day of sale, and that the said W. M. Clark and A. J. Derrickson were the joint purchasers at special Commissioner's sale of parcel numbered "3", for the sum of \$25.00, the whole of which was paid to the said Special Commissioner on the day of sale in cash, it is further ordered that the said Special Commissioner do execute and deliver unto said Major W. Kelley and unto W. M. Clark and A. J. Derrickson deeds, with special warranty of title, conveying unto them, respectively, parcels numbered "2" and "3", upon the same being properly prepared at the purchaser's expense, inclusive of the cost of Internal Revenue Stamps, being presented to him for execution.

And the said Special Commissioner shall make report to this Court of his proceedings hereunder.

And the Court reserves, etc.

By J. Brooks Mapp: Here is another report that I should have read before that. This one is filed October 25, 1919:

(g) REPORT OF SPECIAL COMMISSIONER.

"In the Circuit Court for the County of Accomack, Virginia.

Thomas B. Birch

vs.

Joshua W. Birch, et als.

In Chancery.

page 110 } The undersigned Special Commissioner, appointed in the above entitled cause to make sale of all the real estate of which Amy Porter died seized and pos-

sessed, by a decree of said Court entered therein on the 3rd day of June, 1919, begs leave to submit this report of his proceedings under and pursuant to said decree, viz.:

That having complied with the requirement of said decree as to giving bond, and after giving at least twenty days' notice of the time, place and terms of sale by printed posters posted at the front door of the Courthouse and at three or more public places in the vicinity of said real estate, as by said decree directed, he offered said real estate for sale at public auction in front of the Matthews Hotel, Chincoteague Island, Virginia, on Saturday, July 12, 1919, at 8:30 o'clock p. m.; that he offered for sale the said real estate in three parcels instead of two, as described in complainant's bill, but the property sold was all mentioned and described in complainant's bill, though in a confused and improper manner; that at said sale he offered for sale the late residence of said Amy Porter, deceased, and the lot whereof the same is erected as Parcel numbered "1", to-wit: All that certain lot, piece or parcel of land situate in the town of Chincoteague, County and State aforesaid, whereon was erected the late residence of said Amy Porter, containing $1\frac{1}{2}$ acres, surveyed by J. Caulk, Surveyor, May 7, 1875, with the following boundaries given as of that date in said survey: "Beginning in the road near the Northeast gate of Mrs. Tracey's yard in the road, thence by and with Jessey Watson's land to the Widow's dower N. $54\frac{1}{2}$ E. 16.75 P., thence along the said Widow's Dower to the woods S. 41 E. 15.8 P., thence by and with said Watson's woodland to the aforesaid road near
page 111 { Mrs. Wm. Whealton's fence at a stone in said road S. $58\frac{1}{2}$, W. 17.3 P., thence along said road to first beginning stone in road near said Mrs. K. Tracey's gate, containing $1\frac{1}{2}$ acres"; and at such sale R. A. Keas being the highest bidder, and bidding therefor the sum of \$1,070.00, became the purchaser thereof at the price named.

That as parcel numbered "2", he sold the undivided one-half interest of the deceased in and to that certain lot of land containing $1\frac{1}{2}$ A., more or less, situate in said town, County and State, and bounded as follows: On the Northeast, by the land of Cyrus G. Reed, Woolsey Burton, John Evans, Major Kelley, and William F. R. Cropper's heirs; Southeast, by the land of Libbie Reed; Southwest by the lands of Major Kelley and Frank Blake, and Northwest, by the lands of Robert W. White and James Powell; and at such sale Major W. Kelley being the highest bidder, and bidding therefor the sum of \$225.00, became the purchaser thereof at the price named.

That the lot of woodland on the North end of said Island he sold as parcel numbered "3", and W. M. Clark and A. J. Derrickson being the highest bidder, and bidding therefor the sum of \$25.00, became the joint purchasers thereof at the price named,—making a total of \$1,320.00 for which the three parcels were sold.

The said R. A. Keas paid in cash to the undersigned on the day of sale one-third of said purchase price, to-wit, the sum of \$356.67, and stands ready to pay the remaining two-thirds of said purchase price in cash upon confirmation of said sale and the due execution and delivery unto him of a good and sufficient deed therefor, with special warranty of title; and the said Major W. Kelley and the said W. M. Clark and A. J. Derrickson paid to the undersigned, in cash, on the day of sale, the whole of the said respective purchase prices of the other two parcels purchased by them.

Respectfully submitted, this 24th day of October, A. D. 1919.

N. B. WESCOTT,
Special Commissioner."

By J. Brooks Mapp: The next is another report of the Special Commissioner. This was filed April Term, 1920.

(h) REPORT OF SPECIAL COMMISSIONER.

"In the Circuit Court of Accomack County, Virginia.

Thomas B. Birch

vs.

Joshua W. Birch, et als.

In Chancery.

To Honorable James H. Fletcher, Jr., Judge of said Court:

The undersigned Special Commissioner begs leave to submit the following report of his proceedings pursuant to the provisions and directions of the decree entered herein on December 11, 1919, as follows:

That he paid the taxes due and unpaid upon decedent's real estate, amounting to \$4.08, and the costs of this suit,

taxed by the Clerk, aggregating \$94.70, and the remainder of the \$1,274.60 thus left in his hands, to-wit, the sum of \$1,175.82, he distributed among the heirs at law and distributees of Amy Porter, deceased, in the proportions specified in the said last named decree, as follows: To Thomas B. Birch and Joshua W. Birch, each 42/210 thereof, \$235.17; page 113 } to Mary M. Whealton and John S. Birch, each 21/210, \$117.59; to Josephine C. Scoriah and Flora Roe, each 18/210, \$78.39; to Weldon Cropper and Frances Cropper, each 7/210, \$39.19, (they being infants under the age of twenty-one years, without guardians, and the same having been deposited, pursuant to the direction of said decree, in the Bank of Chincoteague, Incorporated; to Daniel Bowden, Joshua P. Bowden, Frank B. Bowden, Mary J. Bowden (now Mary J. Wilson), Alice Mason and Annie M. Derickson, each 6/210, \$33.59; and to Ebbe T. Bowden, Ernest D. Bowden, Paul Bowden, Irving Bowden, Lloyd Bowden and Charles H. Bowden, each 1/210, \$5.60, for all of which disbursements vouchers are herewith returned.

Respectfully submitted by

N. B. WESCOTT,
Special Commissioner."

(Note:) Vouchers for all disbursements and a copy of the original decree are attached to this report, but were not read to the jury.

By J. Brooks Mapp: The next is a decree confirming that report, and authorizing distribution, entered December 11th, 1919. We offer those papers in evidence.

(i) DECREE AUTHORIZING DISTRIBUTION, ETC.

"In the Circuit Court for Accomack County, Virginia.

Thomas B. Birch

vs.

Joshua W. Birch, et als.

In Chancery.

page 114 } This cause came on this day to be again heard upon the papers formerly read and the report of N. B. Wescott, Special Commissioner, this day filed, to which report no exceptions have been taken, and was argued

by counsel: On consideration whereof, the Court doth adjudge, order and decree that said Special Commissioner's rebe and the same hereby is confirmed.

And it appearing from said Special Commissioner's report that there is now in his hands the sum of \$1,274.60, net proceeds of the sale of the real estate of Amy Porter, deceased, mentioned and described in complainant's bill, the Court doth adjudge, order and decree that said special commissioner do pay the taxes due and unpaid upon said real estate and the costs of this suit to be taxed by the Clerk, inclusive of an additional attorney's fee of \$37.50 to N. B. Wescott, for his services in the institution and conduction of this suit, and that he distribute the remainder then left in his hands unto the heirs at law and distributees of Amy Porter, deceased, mentioned in the bill herein, and ascertained and reported by the report of Samuel T. Ross, Commissioner in Chancery, heretofore filed in this cause April 23, 1919, viz: Unto Thomas B. Birch, 42/210; to Joshua W. Birch, 42/210; to Josephine C. Scoriah 14/210; to Flora Roe, 14/210; to Daniel Bowden, 6/210; to Joshua P. Bowden, 6/210; to Frank B. Bowden, 6/210; to Mary J. Bowden, 6/210; to Ebie T. Bowden, 1/210; to Alice Mason, 6/210; Annie M. Dickerson 6/210; to Ernest D. Bowden, 1/210; to Paul Bowden, 1/210; to Irving Bowden, 1/210; to Lloyd Bowden 1/210, to Charles Bowden, 1/210; to Mary M. Whealton, 21/210; to John S. Birch, 21/210; to Weldon Cropper, 7/210; and to Frances Cropper 7/210 thereof.

page 115 } And it appearing to the Court from the bill herein that said heirs at law and distributees, Weldon Cropper and Frances Cropper, are minors aged, respectively, thirteen and eleven years, the said Special Commissioner is hereby ordered to deposit their respective distributive shares, estimated at between thirty-five and forty dollars each, to the credit of this cause, and upon interest bearing account in the Bank of Chincoteague, Inc., to await final disposition by order of this Court under and in pursuance of the provions of Section 2622a of Pollard's Code of Virginia. And said Special Commissioner is hereby ordered to make report of his proceedings to the Court hereunder, together with receipts for his disbursements herein authorized.

And the Court reserves, etc.

By G. Walter Mapp: We want to offer next the depositions of Charles Turlington, and others.

By the Court: There is no objection to that, is there?

Mr. Gunter: No, sir, we agreed to that this morning.

By Mr. Gunter: If your Honor please, my attention has just been called to it. I intended to object to the introduction of all of these Chancery papers that have just been read to the jury.

(Depositions read by G. Walter Mapp as follows:)

“Mary L. Holland, et als.,

vs.

James T. Powell, R. A. Keas, and others.

The deposition of Charles Turlington and others, taken on Chincoteague, Virginia, this the 23rd day of April, 1932, pursuant to a notice hereto attached, and by agreement of counsel, the formality of the presence of a Notary Public being waived by counsel representing all parties in interest, to be read as evidence on behalf of the Defendants in certain ejectment suits wherein Mary L. Holland and others are Complainants and James T. Powell, R. A. Keas and others are defendants.

Present: Gunter & Gunter, J. Harry Rew, George L. Doughty, Jr., Attorneys for Complainants. G. Walter Mapp, Attorney for Defendants.

CHARLES TURLINGTON,

being first duly sworn, deposes and says as follows:

By Mr. Mapp:

Q. What is your name?

A. My name is Charles Turlington.

Q. When were you born?

A. I was born— I know it as well as I know myself, but can't call it now.

Q. The year is all right. Or I will put it differently. How old are you?

A. I am in my 95.

Q. Where have you always lived?

A. Right on this tump most of the time.

Q. You mean Chincoteague Island?

A. Yes, sir.

Q. Did you know Mr. William T. Watson in his lifetime?

A. Some of it, I did. He lived down this way. I lived up

north a little further. Lived up on the Northern
page 117 } end of the island. Deep Hole, they call it.

Q. Did you know William Watson's widow?

A. What?

Q. His wife?

A. His first wife?

Q. No, second wife?

A. That I do.

Q. Did she remarry?

A. Yes.

Q. Whol?

A. John Thornton.

Q. Were you present?

A. I was.

Q. Did you know William Watson's children?

A. I did know them.

Q. How many children did he have, if you recall?

A. You mean the one that lived down the Island?

Q. Yes.

A. He had three.

Q. What were their names?

A. One was named Jess and I don't know that little tiny
one's name.

Q. Was that a boy or girl?

A. Boy.

Q. When did that one die?

A. They both died together.

Q. Which died first?

page 118 } A. The boy, he died in the morning and the old
man in the afternoon.

Q. Do you remember the girl's name?

A. Yes, Emily Watson.

Q. How long did his wife stay a widow before she married
John Thornton?

A. Now, I couldn't be right up to that.

Q. Was it a long time?

A. About two or three years. Somewheres in there I think.

Q. You have no interest in this case?

A. Not a bit on either side, just nothing. I am here to
tell you what little I know and that is as far as I can go.

Q. Was that boy named George? The boy that died the
same day, was his name George?

A. George Watson.

And further this deponent saith not.

NANCY M. DAISEY,

being first duly sworn, deposes and says as follows:

By Mr. Mapp:

Q. What is your name?

A. Nancy M. Daisey.

Q. How old are you?

A. They say I am in my 83. That is what they say. Let me tell you something, I don't want to go to Court.

Q. You are not going to Court.

A. I don't want to get in any mess. I was just page 119 } as well acquainted with Mr. Watson's wife as I am with one of these.

Q. William Watson's wife?

A. Yes, Lizzie Williams. His other wife I know nothing about.

Q. Whom did she marry after Mr. Watson's death?

A. Mr. Thornton.

Q. What Mr. Thornton?

A. John Thornton.

Q. Mr. Watson had been married twice hadn't he?

A. I guess he had. He had two children by the first wife, Emily and Jesse.

Q. Did he have a child by Lizzie Williams?

A. They said so. I never seen it.

Q. What was its name?

A. I don't know that.

Q. Do you know when Lizzie Williams married John Thornton? Do you know about the time they got married?

A. No, sir, I don't. We were children, stayed home with our parents. She lived all the time right there where old Union Baptist Church was. You know where she lived. That is as far as I ever knowed her to live.

Q. When did the child by Lizzie Williams, when did that die?

A. I don't know, to tell the truth. They tell me he died over night, the child at night the father in the day, something like that.

Mr. Doughty: We object to the testimony on the ground that she is only testifying as to what was told her.

page 120 } Q. You were not there?

A. No, sir, I was only a child.

Q. Do you know even from hearsay which one died first, the baby or old man Watson?

Mr. Doughty: Objected on the same ground.

A. I couldn't tell that I don't know. I lived way down the marsh to the lower end. They lived up yonder. My mother lived with his mother when his father died.

Q. When Mr. Watson's father died?

A. Yes, sir.

And further this deponent saith not.

I, Virginia Bull, a stenographer, hereby certify that the foregoing depositions were duly taken and reduced to writing before me at the place and time therein mentioned, pursuant to the annexed notice.

Given under my hand this the 23rd day of April, 1932.

(Signed) VIRGINIA BULL."

Mr. G. Walter Mapp: The next are the depositions of Mrs. Nancy Jones, which I will read next:

"*In re*: Ejectment suits of

Mary L. Holland, et als.,

vs.

James T. Powell, R. A. Keas, William J. Matthews, Mrs. Sallie Lewis, C. W. Purnell, Bank of Chincoteague, and others.

The depositions of Mrs. Nancy Jones and others, taken before me, Thomas L. Northam, a Notary Public page 121 } for the County of Accomack and the State of Virginia, pursuant to notice hereto annexed and by agreement of counsel, at Greenbackville, in the County of Accomack, on the 25th day of April, 1932, between the hours of two P. M. and six P. M., to be read as evidence on behalf of James T. Powell, R. A. Keas, William J. Matthews, Mrs. Sallie Lewis, C. W. Purnell, Bank of Chincoteague, and others, in certain actions at law, depending in the Circuit Court of Accomack County in the State of Virginia wherein the persons herein named are several defendants in suits instituted by Mary L. Holland and others, Plaintiffs.

Present: George L. Doughty, Jr., Attorney for Plaintiffs
G. Walter Mapp, Attorney for the Defendants.

MRS. NANCY JONES,
being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Mapp:

Q. What is your name?

A. My name is Nancy Jones.

Q. How old are you, Mrs. Jones?

A. I am in my 92.

Q. Where were you raised?

A. Chincoteague Island.

Q. How long did you live on Chincoteague Island?

A. I lived there many years. I lived there until I had grown children.

Q. When you left Chincoteague you came over to Greenbackville?

page 122 } A. Yes, sir. No, the first place was Girdletree.
Q. Then from Girdletree you moved here?

A. Yes, sir.

Q. And you have lived here ever since?

A. About here, not in this house.

Q. In this neighborhood?

A. Down in Franklin.

Q. You say you were born on Chincoteague?

A. Bred and born there and had two children there, and were grown.

Q. Did you know William Watson?

A. Of course I did.

Q. Were you related to him?

A. He was my own cousin, and his wife too.

Q. His first or last wife?

A. His last wife was my own cousin and he was.

Q. William Watson was married twice?

A. Yes, sir.

Q. How many children by the first marriage?

A. Two.

Q. What were their names?

A. Emily and Jesse.

Q. Which was the older?

A. Emily was the older.

Q. How many children did he have by the second wife?

A. Last one?

Q. Yes.

A. One.

Q. What was the name of that child?

A. George.

page 123 } Q. How old was that child when it died?

A. I can't tell you exactly, about three or four months old, I think.

Q. What was the name of that child?

A. George.

Q. Which died first, George or his father?

A. George died first. I was right by him.

Q. Did he die in the day or night?

A. Just at sunset.

Q. How long after his death was it before Mr. William Watson died?

A. I can't say about that. I think he died sometime that night.

Q. Were they both buried in the same coffin? I have heard that.

A. I don't think so.

Q. Did William Watson's widow, Elizabeth—Her maiden name was Elizabeth Williams, wasn't it?

A. Yes, sir.

Q. Did she marry again?

A. Yes, sir, a man named John Thornton.

Q. About how long after that Mr. Watson's death was it before she married John Thornton?

A. I don't know. I think over a year or more. Not very long.

Q. You don't remember the exact time?

A. No.

Q. Were you still living on the Island when Elizabeth Williams married John Thornton?

A. Yes, sir. I was raised, bred and born there.

Q. You hadn't moved?

page 124 } A. No, sir, didn't move until married and had three children.

Q. When will you be 92? When is your birthday?

A. I will be 93 the first day of September, this coming.

Q. What was your maiden name before you were married?

A. Reed.

Q. Do you know anything about a grave yard that was on the Watson place on Chincoteague and which way it was?

A. I don't exactly believe I— Things are changed from what they used to be and I haven't been there for a long, long time.

Q. Are you able to go down to the Courthouse?

A. No, don't carry me there. I had rather be carried to jail.

Q. You say you believe you do and you believe you don't

remember about the grave yard. Think a minute to see if you recall if there is a grave yard on the premises.

A. I don't believe I remember much about the grave yard, but don't believe it was far from the house.

Q. Do you remember a back fence that ran a short distance back of the house?

A. I remember that. A sheep got after me and butted me over there.

Q. How far was that from the grave yard?

A. It wasn't very far.

Q. How far was it from the house?

A. I couldn't tell you that.

Q. Do you know how far the grave yard was from the house?

A. No, sir, I don't remember. I never noticed. I was young.

Q. But this fence wasn't far from the grave yard?

A. It wasn't very far.

page 125 }

CROSS EXAMINATION.

By Mr. Doughty:

Q. How old was Mr. William Watson when he died?

A. I don't know.

Q. Could you guess?

A. I don't know how old he was, only he couldn't have been much more than 30.

Q. Mr. William Watson was not more than 30? How old were you when he died?

A. I was about 16.

Q. You think you were 16.

A. I was about 16 years old.

Q. How long was it between his first wife's death and his second wife's death?

A. I couldn't tell you that. I wasn't acquainted with her. I only visited there when he married this last wife. I used to go stay with her.

Q. How far did you live from where they lived?

A. Lived on the eastward side.

Q. And they lived right near Chincoteague Channel didn't they?

A. Yes, sir.

Q. What kind of a fence was it that you spoke of there?

A. Fence? Well, as I remember, plank boards.

Q. Was it a board fence?

A. I think so.

Q. Did it go all the way across the property?

A. I don't think so, just around. There was an orchard back of it and a fence all around that.

page 126 } Q. And didn't this fence run around the orchard and also around the house?

A. Yes, sir.

Q. You remember a little garden that he had inside this fence?

A. Yes.

Q. Do you remember on which side of the house that was, on the Chincoteague Channel side or the other side?

A. On that side.

Q. On the East side?

A. Yes.

Q. Do you remember when this boy George, died? Do you know when it was?

A. No. I was there when he did die.

Q. Do you remember about when it was? About what year it was? Do you remember that?

A. He died in his grandmother's arms.

Q. Do you know about what year that was?

A. No, I don't.

Q. Which grandmother was it that he died in the arms of?

A. Lizzie Williams' mother, my own aunt.

Q. Who was her husband?

A. Old man Little Williams.

Q. Is he related to Joshua and Littleton Williams now on there?

A. Yes, sir. Let's see, Selby Williams was his son. He married before he married my aunt and he had these children by her. I don't know how old he was. He was an old man when he died.

Q. Was George and his father, Mr. William
page 127 } Watson, both buried the same day or not, do you know?

A. I guess they were.

Q. You only guess that?

A. Yes, sir. I don't know, I went home again.

Q. You have no recollection of whether they buried the same day or not do you?

A. No. No, I don't believe they were.

Q. Which was buried first?

A. I think the baby was.

Q. You are not sure?

A. I am not sure. Anyone young like that they weren't paying much attention to anybody's dying. No, sir. I know

what he said when the last breath went out of that baby. He asked them if the baby was gone and he said "Thank the Lord".

Q. Why did he say that?

A. He had rather see that gone before he went. Never knew whether it is going to be treated right or wrong or what is going to become of it. That's the way I felt about it.

Q. Did you hear him make that statement?

A. Yes, sir.

Q. You were there. Did the baby die downstairs or up?

A. Downstairs, right by an old-fashioned chimney.

Q. Was Mr. Watson upstairs or down?

A. He was downstairs.

Q. They were both in the same room?

A. Both in the same room.

Q. Was anyone else in there?

page 128 } A. I don't remember anybody but me, its grandmother, its mother and him.

Q. Anyone else come there that day?

A. I can't tell you.

Q. Do you know whether there is anyone else on the Island that was there that day?

A. No. Old as I am. They are dead and gone.

Q. There are people on the Island old as you are.

A. Who are they?

Q. Mr. Wes Fletcher.

A. How old is he?

Q. 92. Mr. Charles Turlington. Do you know him?

A. No.

Q. He says he is 95. You don't remember him at all.

A. No. I don't remember him. I left Chincoteague ever since— Well, I didn't have either child free when I left Chincoteague.

Q. Do you know Ben Scott? He says he is 93 or 94? Do you know whether he was there?

A. No, sir, there were no men there. Nobody was there but the mother, the grandmother, me, the two children, Jesse and Emily.

Q. Who did Jesse Watson go to live with after his father's death?

A. I don't know. I don't know. To save my life I can't tell you that.

Q. Do you know Mr. Robert Watson?

A. Yes, sir.

Q. What relation was Jesse Watson and Robert Watson?

- A. Was it his grandftaher?
- page 129 } Q. You think it was his grandfather?
- A. I don't know. They are kin though. I guess, well, Jesse's father was Bill Watson. Old man Robert Watson—What kin were they? I don't know.
- Q. Were they any relation at all?
- A. Yes, they were relation. Henny, his wife, Bob's wife, was Bill Watson's sister.
- Q. Then Robert Watson and Jesse Watson were no blood relation?
- A. I guess not.
- Q. Do you know?
- A. No, I don't.
- Q. Do you know whether Jesse Watson went to live with Robert Watson after his father's death or not?
- A. No, I don't know that. His wife, Elizabeth, she went home to her father and mother. She didn't have no children.
- Q. She didn't remain at the home?
- A. No, sir.
- Q. Did she go back there to live?
- A. No, sir. She stayed with her mother and father.
- Q. She never went back to the place that this child and the husband died to live?
- A. No, sir.
- Q. Where did she and Mr. John Thornton live, when she afterwards married?
- A. She lived there in the field next to their father. He gave them a lot.
- Q. Where did their father live?
- page 130 } A. A little back of them across to the beach like, you know.
- Q. On the eastern side?
- A. Yes.
- Q. You will say that she after Mr. William Watson's death, that she never went back to live at the homestead?
- A. I know she didn't because that was the only daughter they had.
- Q. Did her husband live there?
- A. No.
- Q. Lived at the lot?
- A. Yes.
- Q. Who lived at the home place after Mr. William Watson's death?
- A. I don't know. I don't know.
- Q. You did go back over to town didn't you?

A. Once in a while and didn't pay any attention to it. I am not going to tell no more than I know.

Q. You are sure that Mrs. Thornton, who was Mrs. William Watson, Mr. William Watson's widow, lived on the eastern side after her first husband's death?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Mapp:

Q. Mrs. Jones, you worked for William Watson and in the family before his death?

A. Sir?

Q. You worked or lived there with your cousin, Elizabeth Williams Watson and William Watson?

A. Yes, sir, I lived with her, I don't know, a month or two months.

Q. And you were living there at the time that page 131 } they died?

A. No.

Q. You were not living there?

A. No.

Q. Just gone to see them?

A. Yes, sir, with my aunt. Just went to attend to the baby.

Q. You had worked for them?

A. Yes, indeed.

Q. Mrs. Jones, how old were you when you married?

A. About 17.

Q. You married after this?

A. Yes.

Q. After you married what part of the Island did you go to live on?

A. On the Eastern side.

Q. In the same section?

A. Yes, sir.

Q. In regard to the fence you have spoken of, a board fence that ran around the orchard. Was there also a log fence, a worm fence, back there?

A. It seems to me that it was plank nailed up. I fell over it. The old sheep butted me. It was plank.

Q. Are you able to say how far that was from the graveyard?

A. No, sir. I can't tell you. I never paid no attention to anything like that.

CROSS EXAMINATION.

By Mr. Doughty:

Q. Mrs. Jones, about how long was it after William Watson's death that you married, would you say?
page 132 } A. I was about 17.

Q. About how long was it before you married?

A. It was a good while.

Q. About what would you call a good while?

A. I can't tell you that. I don't know whether I got married—I can't tell you that.

Q. Do you remember where you were married?

A. Yes, I do.

Q. Where was that?

A. On Chincoteague, an old house with no windows in it.

Q. On the Eastern side?

A. Yes.

And further this deponent saith not.

By agreement of counsel representing all parties signatures of witness is waiver. Also the signatures of the two witnesses, Charles Turlington and Nancy Maria Daisey, taken on Chincoteague, on the 23rd day of April, 1932.

State of Virginia,

County of Accomack, to-wit:

I, Thomas L. Northam, a Notary Public for the county of Accomack in the State of Virginia, do hereby certify that the foregoing depositions were duly taken before me, at the place and time therein mentioned, pursuant to notice.

In witness whereof I have hereunto set my this the 26th day of April, 1932.

(Signed) T. L. NORTHAM,
Comr. Chancery."

page 133 }

S. E. QUILLEN,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

By G. Walter Mapp:

Q. Where do you reside?

A. Chincoteague.

Q. How long have you resided there?

A. I come there in 1875.

Q. How old are you?

A. I am in my 75. I will be 75 in November.

Q. Of course William Watson was dead before you came there?

A. Yes, sir.

Q. You knew Jesse Watson?

A. Yes, Jesse and Emily.

Q. You knew the Porters?

A. Yes, sir, I used to go with him in a vessel.

Q. You have lived on Chincoteague ever since 1875?

A. No, I lived on Assateague 14 years, but I was backwards and forwards.

Q. Did you drive back and forth down to this property?

A. In summer time when it was dry we come across the glades. We used to come out that way and down Cleveland Street.

Q. You were keeping the light on Assateague?

A. Yes, sir.

Q. How many glades are there, if you know, on this Watson property that run North and South of it?

A. The line comes right down part of a glade and there might be a little ridge until you come to the canal,
page 134 } and on this side of the canal there is high land,
and there used to be a colored man named Al Ewell there, he used to have a garden fenced in.

Q. Did that fence run clean across the piece?

A. It went around. I never noticed particular just how much there was, but there was a lot there Al Ewell lived on.

Q. From the first glade up to the canal it was all pretty low, wasn't it?

A. All low and then come some high ground there.

Q. Then from there on what was the next glade?

A. There wasn't no more glade until you come up to where Millie and Jim Thornton lived. There is a glade called Beef Hill. I don't know if it run clear through. And then there was another hill where Ken Porter, called Sand Bur Hill. I boarded with Tracy right across the road. He built a house and said he—

Q. That is where Mr. Keas now lives?

A. Where Mr. Keas now resides.

Q. Where is the last glade to the West side?

A. There is another glade to the West of him. That was the biggest glade of any of them. It looks so to me.

Q. Do you ever recall any fence down the side of this glade?

A. The fence didn't come to the glade. Where Mr. Ken Thornton lived, to the South of the Hotel and where he lived, was back from the Main road and there was a log fence, but it didn't go clear across what they call Cleveland and Mumford Streets now. It went back as far as to the grave yard, and there was a *precimmon* tree on that grave yard and I seen them bury some people there. I was a youngster and wasn't interested.

page 135 } Q. In '76 you saw them bury some one in the graveyard?

A. Yes, sir.

Q. How close was that fence to this glade that ran through there?

A. I should judge 150 to 200 yards back to the glade from the fence. I don't know exactly about that.

Q. And that was a log fence?

A. Yes, sir.

Q. Was another fence of any kind around the old main house?

A. It was an old fence there. It was partly down and if I remember right the pails was out and I used to go in there with his son John,—old man Ken Thornton's son.

Q. Ken Thornton occupied the residence of William T. Watson?

A. The old residence.

CROSS EXAMINATION.

By J. Harry Rew:

Q. Mr. Quillen, how many glades were there from the Splitting Line to the lot that you have referred to which was occupied by the colored man?

A. From the Splitting Line? It was all low. I own a piece down further and it comes down partly through the glade. It is all low land up to the canal. It is no tillable land until you get up to the canal, and this lot where the negro lived on he had fenced in after you pass the canal. You come right to his land.

Q. Was there a glade immediately to the East of this lot that was occupied by the colored man?

A. I don't remember of any. It is low. They call it all glade land.

page 136 } Q. Do you know where the canal is at the present time?

A. Yes, sir.

Q. Don't that lie immediately to the lot which you are referring to?

A. You come right across the canal here and right here was his fence.

Q. And there was a fence to the West of that glade, wasn't it?

A. To the West of the canal, yes, sir.

Q. When you first knew this lot?

A. Yes.

Q. Did that fence extend all the way across the land?

A. No, sir.

Q. Was the entire lot fenced?

A. Yes, I think it was a lot fenced in and a little house stood in it.

Q. Was that lot in cultivation at that time?

A. Yes, sir, I have seen him to work into there when I passed by.

Q. Between that lot and the graveyard what was the character of the land?

A. It was low. Some of it has been hauled off, and when you come to Willow Street is a road down there and there was an old man named John Reid had a little house on that street and there were big trees and they called it Beef Hill. There were hills and glades they called them. It was an old colored woman lived near Jim Thornton,—I married Jim Thornton's daughter,—there was a glade around this property, and then you come to Sand Burr Hill.

Q. There was considerable large timber on that page 137 } land, wasn't it

A. Yes, to the East of Pusey's place.

Q. Mr. Quillen, isn't there a lot of timber between the canal and the Splitting Line?

A. Not much.

Q. Isn't right now right much there?

A. There wasn't then. I have seen some of it cut when I would come across that way, but they weren't very large. It might have been cut off before.

Q. It was set in timber at that time?

A. Yes, water bushes and some young pines.

Q. Was there a fence around the home place?

A. Yes, sir.

Q. What kind of fence was that?

A. A log fence.

Q. About how much was enclosed there?

A. I never particularly noticed, but a right good sized little yard.

Q. A yard and garden?

A. It run back to the graveyard and on the graveyard there was what they called heavenly trees, but that was outside of the fence.

Q. Was there a fence between the fence which surrounded the house and the graveyard

A. Yes, there was a fence between it. No, where the house was fenced in I think it ran all the way back, but when Matthews got it he built other fence.

Q. Did that fence continue from Cleveland Street to Mumford Street?

A. No, sir.

page 138 } Q. How far is that fence from the Keas property now?

A. From where that fence was then?

Q. Yes.

A. I should think 300 or 400 yards, yes, sir.

Q. How far was that fence from the glades to the West of the Keas property that you have referred to?

A. It must have been 150 to 200 yards from the glades That is all, sir.

GEORGE CLAYVILLE,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

By J. Brooks Mapp:

Q. Where do you live?

A. Chincoteague.

Q. How old are you?

A. 63.

Q. How long have you lived on Chincoteague?

A. All my life.

Q. Are you familiar with what is known as the William Watson property there?

A. I don't know whether I am familiar with the Watson land or not. I know where this house was.

Q. You mean the old Watson homestead?

A. Yes.

Q. Do you know where the parting line is?

A. No, sir.

Q. You are not familiar with that?

page 139 } A. No, sir.

Q. Are you familiar with the glades back of the Watson property that extend to the East, several glades over that way?

A. I know the glade,—where was this fence where I think old man Ken Thornton lived. I know there was a log fence around there and there was a glade between this log fence and the Kim Porter place, for we used to skate around there in the winter, and in the summer we used to play ball and hide and seek there.

Q. Mr. Clayville, the log fence you are talking about, that fence was just West of the glade, as I understand it?

A. Yes, sir.

Q. And right on the East side of the glade was Mr. Keas' property—what he now owns?

A. Yes, where he lives now.

Q. Do you know where the canal is?

A. Yes, sir.

Q. Was there a fence there?

A. Not to my knowledge.

Q. But you remember one just West of the glade, the glade in turn being just West of Mr. Keas' house?

A. Yes, sir.

Q. There was a fence around Mr. William Watson's homestead?

A. I don't remember that. I only remember the log fence.

Q. This log fence West of the glade, did that go all the way across from one street to the other?

A. No.

Q. How far did it go.

page 140 } A. I should think probably half of the distance across. I don't remember exactly, but I know that fence was next.

Q. How close was that fence to the glade?

A. I should think about 150 or 200 yards.

Q. What was between that fence and the graveyard, if you remember where the graveyard was. What kind of land?

A. A lot of old bushes, these heavenly bushes.

Q. Was the land woods or cleared land that bushes had grown up on?

A. I think it had been woods there and had been cleared up and brambles grew up again.

Q. Mr. Clayville, was there any sign,—could you tell from that fence that went half way across there,—was there any sign there where the balance of the fence had fallen down?

A. I don't remember.

Q. But your earliest recollection is that there was a fence near that glade?

A. I know it was.

Q. And that wasn't the fence that went around the home-
stead?

A. There was a log fence around there and that is all the
fence that I know of.

Q. And that went straight down to the glade?

A. It went across from Cleveland Street to Mumford
Street, going North and South.

Q. Which street did it end up nearer?

A. I think nearer to Cleveland Street.

Q. And Cleveland Street is on the South?

A. I think so, I am not positive. I paid but lit-
page 141 } the attention to it anyhow.

Q. You have no interest in this case?

A. Not a bit in the world.

Take the witness.

CROSS EXAMINATION.

By B. T. Gunter, Sr.:

Q. You say this fence was from 150 to 200 yards West of
the glade?

A. Yes, sir. Runs just out back of the graveyard.

Q. I understand, but you said you thought it was 150 to
200 yards from the glade?

A. Possibly so.

Q. Did that fence enclose anything?

A. I am not certain about that thing, Mr. Gunter.

Q. You don't recall anything?

A. No, sir.

Q. When you knew about it the fence around the house was
all gone?

A. I don't know if there was any fence up there.

J. Brooks Mapp: You say 150 to 200 yards from the glade?

Q. How wide was this glade?

A. We used to skate on it. That is the only part I know
of it.

Q. Mr. Clayville, do you mean 150 yards from the edge.

Mr. Gunter: He has stated what he said twice. He said
from the glade.

J. Brooks Mapp: I want to ask him from the edge of the
glade, or at the center.

By the Court: All right.

page 142 } J. Brooks Mapp:

Q. Do you mean 150 or 200 yards from the edge of the glade, or about the center?

A. I don't know, it was somewheres about that. The glade was quite a glade and we would skate, and from the glade to the fence is about that.

Q. Did the glade run straight?

A. It was a glade in there and we would skate around it.

That is all.

WILLIAM J. MATTHEWS,

a witness on behalf of the defendant, being first duly sworn,
testified as follows:

By G. Walter Mapp:

Q. Mr. Matthews, where do you reside?

A. Chincoteague Island.

Q. Everybody is giving their name and boasting about their age.

A. I think they picked the old class this time.

Q. How old are you?

A. 77.

Q. How long have you lived on Chincoteague?

A. I went there in 1871.

Q. Are you familiar with this Watson land, have you known it and do you know it?

A. I have been around it and on it and I should have kind of got used to it.

Q. Do you know where Mr. Keas lives?

A. Yes, sir.

Q. Do you know the glades to the West of the Porter house

A. I know there is a glade back there. I haven't
page 143 } traveled that end of it much.

Q. That has been a little off your beat. Do you know where the old Watson homestead was?

A. They call it now William Watson's, but when I went there in 1871 John Thornton bought it and my father owned it. It was called John Thornton's house. I don't know anything about the William Watson part of it.

Q. Elizabeth Williams married one of the Thornton's.

A. John Thornton.

Q. When you first went there was there any enclosure around this place?

A. You may have called it. A little old rough boards or something to keep cattle out.

Q. Do you know anything about a graveyard?

A. There was one back by the hotel. It adjoined this property. I went to a funeral there.

Q. That graveyard has been hauled away for ballast?

A. I imagine it has.

Q. Was there any fence there when you first recall on either side of the grave that is on the West of Chincoteague.

Q. When I went to Chincoteague there wasn't a house on the West side of that property. The John Thornton house was the only house there at that time.

Q. Do you remember any fence?

A. The hotel was built there and that enclosed it in a lot.

Q. Was there any fence across the Watson land running from Cleveland Street to Mumford Street?

page 144 } A. Only this Hotel enclosure had about half an acre in it.

Q. What was the character of that glade then?

A. If you know anything about a beach arrangement,—hills and water bushes and that sort of stuff.

Q. That was the character of the land?

A. Yes, sir.

Q. Was that glade as large as it is now?

A. I don't visit the glade much. All that tar pot business, I never heard of that before today.

Q. How long have they been taring the nets up there?

A. I don't know, I never saw them.

Q. Was there ever any fence further back on the Watson line clear on back to the splitting line that you know of?

A. I don't know of any.

Q. What kind of land was it between the graveyard and the first glade, which is west of Mr. Keas' house?

A. That is high land.

Q. Clear or woods?

A. A few bushes and trees on it. They have cut them off since Mr. Keas has been there.

Q. Between the Watson house where John Thornton lived and that glade, how was that land?

A. That was all good land.

That is all.

C. E. HOLSTEIN,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

page 145 } By G. Walter Mapp:

Q. You live on Chincoteague?

A. Yes, sir.

Q. How old are you?

A. 66.

Q. Are you familiar with this Watson tract?

A. Very little.

Q. You have always lived on Chincoteague?

A. Yes, sir.

Q. You know where it was all this time?

A. Where they say it is.

Q. What position do you hold on the Island now?

A. All that a man can manage, and then I can't make a living. Undertaker, sale maker and tombstone salesman.

Q. How far back do you remember the John Thornton place, which was the same place as the William Watson place?

A. I don't know anything about it. I can tell you what I know in a nut shell. The reason I know that, I got money for digging the dead up and shipping it out in the Chesapeake Bay. I dug it up for 5c a load.

Q. Where was that graveyard?

A. That was right back of the hotel lot.

Q. How far is that from front street?

A. I guess it is 400 or 500 yards, about that much.

Q. About what time did you dig that up, Charlie?

A. 40 or 45 years ago.

Q. With reference to a fence, was there any fence across the Watson property close to that graveyard?

page 146 } A. I don't know. Not to my remembrance.

Q. Do you remember whether there was or wasn't?

A. No, sir. I remember there was a graveyard. A man by the name of Bowden and Smith done the hauling. They were paying me 5c a load while they were going to old Man Hurley to collect 10c. I was a boy 16 years old and short of money. That is everything I know about the Watson land in the world.

Q. You say you don't remember with reference to the graveyard whether it was any fence. Don't remember about any fence?

A. Yes, sir, Mr. English put up a hotel fence right by the graveyard.

Q. Which side of the graveyard was that on?

A. The Northwest side.

Q. When did English put that up, if you know?

A. I couldn't tell you about that.

Q. You don't remember the fence around the old Watson house?

A. No, sir.

Q. That was all gone before you knew?

A. Yes, sir.

Q. You gentlemen take the witness.

Mr. Gunter: We haven't any questions.

MRS. SALLIE LEWIS,

a witness on behalf of the defendant, being first duly sworn,
testified as follows:

By J. Brooks Mapp:

Q. Mrs. Lewis, how old are you?

A. I am in my 80.

Q. Where do you live?

A. Chincoteague.

page 147 } Q. How long have you lived there?

A. I went there in 1870—January 5th.

Q. Have you lived there ever since then?

A. Yes, sir.

Q. You live on some of this Watson property, do you?

A. Yes, sir. 49 years I have lived at my home.

Q. Did you know his widow?

A. Yes, sir, very well. I knowed her for years.

Q. After the death of William Watson did his widow remarry?

A. Yes, sir.

Q. Whom did she remarry?

A. Mr. John Thornton.

Q. How old was Mr. William Watson's boy, George C. Watson, at the time of his death, if you know.

A. I have heard he was four months old.

George L. Doughty: We object to that answer, that she had heard.

By the Court: I think she can do that, if that is the general impression on the Island.

J. Brooks Mapp (Contd.):

Q. How old did you say you heard he was?

A. Four months.

Q. You, of course, didn't know anything about when he died?

A. No, sir.

Q. Mrs. Lewis, are you familiar, do you know where what

they call the splitting line is? The eastern boundary of this Watson land? The Splitting Line?

A. Only what I have heard. In the middle of page 148 } glade.

Q. There are several glades between that and what is now your Main Street, are they not?

A. Yes, sir.

Q. Do you know where Mr. Keas lives?

A. Yes, sir.

Q. Is there any glade just on the Western side of his house?

A. Yes, sir.

Q. How does that correspond—is that a small glade, or how does it compare with the others?

A. I would call it a small glade.

Q. Do you know where what they call the canal is?

A. Yes, sir, I know where it is.

Q. Was there ever any fence along by the canal that you remember?

A. None what I ever knew except the one that surrounded the Thornton place, the widow's property.

Q. Do you know whether or not that was the fence put there by Mr. English?

A. No, sir, I don't know about that. That fence was there, well, will say—in '70 was when I was married and that was when that grave yard was established. I had two children buried there right in that grave yard and hauled away.

Q. Which side of the grave yard was that fence you are talking about?

A. Next to the Main Street.

Q. What kind of land was there between the grave yard and this glade that is over toward Mr. Keas', if you know?

A. It was good land.

page 149 } Q. Cleared land?

A. Yes, sir, and Mr. Jesse Watson and his wife lived there on that land, and the house stood right in front of Mr. Tobe Selby's place.

Q. Did they cultivate it?

A. No, I don't think they had any garden or anything.

Q. What became of that house?

A. That was a small house. I think they tore it down. He began to build a big house, but it was never finished.

Q. The only fence you can remember is the one around the yard?

QA. Yes, that is all I ever say and I lived right beside it. You gentlemen take the witness.

Mr. Gunter: We haven't any questions.

By J. Brooks Mapp: If your Honor please, I would like to ask, and I never asked anything more reluctantly in my life, but we would like to ask that the jury be permitted to see this land. I think that would throw as much light on it as all of the arguments we can make and all this evidence put together. The jury can go and see it with one counsel from each side.

By the Court: Mr. Mapp, I don't see anything that will help the jury. It is not a question of improvements. It is a question of boundaries. I think the jury should pass on that from the evidence.

J. Brooks Mapp: We thought it would offer more help as to the character of the land, as the tar pot and the size and sources of these glades.

By the Court: I don't think that has anything to do with it.

The question is on the title.

page 150 } By J. Brooks Mapp: I understand, if your Honor please, but in referring to it as a back lot I thought the character would help as to that.

By the Court: I cannot permit that.

By J. Brooks Mapp: We save the point.

WILLIAM C. BUNTING,
recalled to the stand on behalf of the plaintiffs:

By George L. Doughthy:

Q. Mr. Bunting, were you present the day the property in question in this suit was sold by Mr. Wescott, as Special Commissioner?

A. Yes, sir.

Q. Did you hear the announcement made by Mr. Wescott?

A. Yes, sir.

Q. From that announcement did you understand it was a fee simple or a life estate?

By J. Brooks Mapp: We object to that.

By the Court: I am going to permit him to state what the Special Commissioner said.

J. Brooks Mapp: We save the point.

A. He says, I give you just such deed as as I have got. He never said what that deed was.

Q. Were you prepared that day to buy this property if the fee simple interest had been sold?

A. Yes, sir.

J. Brooks Mapp: We object to that.

The Court: Objection sustained. Don't con-
sider that, gentlemen of the jury.

By Mr. Doughty: Exception noted.

By Geo. L. Doughty:

Q. What that day was a fair fee simple value of that prop-
erty?

By J. Brooks Mapp: Objection.

By the Court: Objection sustained.

Mr. Doughty: Exception noted.

NOTE: Answer given to the stenographer and not in the
hearing of the jury.

A. I was prepared to give \$2,500.00 for it that day.

Q. Mr. Bunting, was it a matter of common knowledge on
Chincoteague that a life estate of Jesse R. Watson was being
sold that day?

J. Brooks Mapp: Object to that.

By the Court: Objection sustained.

By Geo. L. Doughty: Exception noted.

(NOTE: Answer given to the stenographer and not in the
hearing of the jury.)

A. Yes.

Recess taken until 10:00 tomorrow morning.

June 17, 1932.

By the Court: On motion of the Plaintiffs to stroke out the
record in the Chancery suit of Thomas Birch vs. Joshua W.
Birch, et als., the motion is sustained except as to so much
of the Bill in said Chancery suit as describes or identifies the
plat of J. Caulk, Surveyor, which has been introduced in this
action.

By J. Brooks Mapp: The defendant, by counsel, excepts
to the action of the Court in striking out any part
page 152 } of the above referred to record, which was offered
in evidence on yesterday on the ground that the

defendant is entitled to show not only the deed to him for the property in question, but also the authority under all by reason of which said deed was executed, and on the further ground that William Watson, one of the plaintiffs, has testified on yesterday while on the witness stand, that he knew of sale.

page 153 } The Court: Gentlemen of the jury, these are all of the instructions of the court as to the law of the case.

The Court instructs the Jury that if you believe from the evidence that the premises described in the declaration are embraced in the description of the land devised by William T. Watson to Jesse R. Watson for life, under the first clause of the will, then until the death of Jesse R. Watson the plaintiffs in this cause were not entitled to the possession of the premises in this cause were not entitled to the possession of the premises in the declaration described, and therefore could not bring suit to recover possession thereof until after the death of said Jesse R. Watson, and there is no evidence in this case of laches or fraud upon the part of the plaintiffs.

The Court instructs the jury: In Virginia, the maxim, *caveat emptor* (look out buyer), strictly applies to judicial sales. The Court undertakes to sell only the title, such as it is, of the parties to the suit, and it is the duty of the purchaser to ascertain for himself whether the title of these parties may not be impeached or superseded by some other and paramount title; and if he should have just ground of objection for want or defect of title, he should present them to the Court before the confirmation of the sale.

The Court instructs the jury that under the first item of the will of William T. Watson, Jesse R. Watson took a life estate in the land whereon the said William T. Watson resided at the time of his death, except a small parcel on the Western side beginning at the Eastern boundary of the land whereon he resided, and Westerly to the Eastern edge of the
page 154 } glade that lays to the Eastward of his back lot fence, with remainder in fee in the children of Jesse R. Watson, living at his death, who are the plaintiffs in this cause.

(b) The Court further instructs the jury that this life estate of Jesse R. Watson was not enlarged by the remarriage

of Elizabeth Watson, widow of William T. Watson, under the fifth clause of said will.

(c) The Court further instructs the jury that any person claiming any part of the land above described, devised to Jesse R. Watson, under the will of William T. Watson, under the will of William T. Watson, whether by deed directly from Jesse R. Watson, no matter if there be a general warranty of title, or through intermediate conveyance, even if by special commissioner appointed by the Court, cannot claim an estate for longer than the life of Jesse R. Watson.

(d) The Court further instructs the jury that after the death of Jesse R. Watson, the children of Jesse R. Watson living at his death, on the 27th day of November, 1931, who are the plaintiffs in this cause, become at once seized of and entitled to the possession of the land above described, no matter in whose possession it may have been on that date.

(e) So that if you believe from a preponderance of the evidence that the defendant, R. A. Keas, is holding the premises mentioned and described in the plaintiffs' declaration, and that the said premises in said declaration so described are embraced in the description of the land devised by William T. Watson to Jesse R. Watson for life, it being a part of the land on which William T. Watson resided at his death, page 155 } and if you further believe from the evidence that Jesse R. Watson died on the 27th day of November, 1931, leaving surviving him as his only heirs at law, his children, who are plaintiffs in this case, then you must find for the plaintiffs.

The Court instructs the jury that the plaintiffs can recover in this action only on the strength of their own title. It does not matter whether the title of the defendant is defective or not, the question is not whether the defendant had title to the land in this suit mentioned, but whether the plaintiffs have title thereto.

The Court instructs the jury that the possession by the defendant of the land in controversy since the death of Jesse R. Watson November 27, 1931, is *prima facie* evidence of his title thereto. And in order to entitle the plaintiffs to recover in this action they must show that they have legal title to the land, and without such proof the jury must find for the defendant, whether defendant has any title or not.

The Court instructs the jury that the possession by the defendant of the land in controversy is *prima facie* evidence of his title thereto. And in order to entitle the plaintiffs to recover in this action, they must show they have legal title to the land, and without such proof the jury must find for the defendant, whether defendant has any title or not.

The Court instructs the jury that one in *bona fide* possession of land, is presumed to have the legal title until page 156 } the contrary is shown, and, therefore, if they believe from the evidence that the defendant Keas, was at the institution of this suit in *bona fide* possession of the land in dispute, claiming under a deed for the same, the said Keas is presumed to have the legal title to said land until the contrary is shown.

The Court instructs the jury that if they believe from the evidence that the boundaries of the land in dispute or the identity of said land are in such doubt and uncertainty that they cannot say whether or not said land was not devised by William Watson to his son, Jesse Watson, then they must find for the defendant.

The Court instructs the jury that if they believe from the evidence that the widow of William Watson, deceased, remarried after the death of said William Watson, it is the duty of the jury to find for the defendant.

NOTE: The case was fully argued by counsel for both sides and the jury retired to consider of their verdict.

The jury returned to the Court room.

The Clerk: Gentlemen of the jury, have you agreed upon a verdict?

The Jury: We have.

The Clerk: Listen to your verdict. "We, the jury, find for the plaintiffs for the land and premises in the Declaration specified, to-wit: a certain tract or parcel of land, with the buildings and improvements thereon, situate, lying and being on Chincoteague Island, in the County of Accomack, Virginia, and bounded as follows, to-wit: North by Mum- page 157 } ford Street, and the land of the heirs of Jesse R. Watson, deceased, South by Cleveland Street; East and West by the land of the heirs of Jesse R. Watson, deceased."

The Court: Is that the verdict of all of you?

The Jury: Yes, sir.

Mr. Mapp: If your Honor please, we move to set aside the verdict returned by the jury and to enter up judgment in behalf of the defendant on the ground of misdirection of the jury by the Court, because of the Court's failure to properly instruct the jury, for the admission of improper evidence, for the exclusion of proper evidence, and because said verdict is contrary to the law and evidence and without evidence to support it. And because under the will of William T. Watson, deceased, dated April 12, 1858, Jesse R. Watson was devised a fee simple estate in the real estate given him by his father, William T. Watson, provided Elizabeth Watson, widow of Jesse R. Watson, remarried.

The Court: Motion overruled.

Mr. Mapp: Exception noted.

EXCEPTIONS TO INSTRUCTIONS.

Thereupon the plaintiffs offered their instructions No. 1, No. 2 and No. 3, as follows:

INSTRUCTION NO. 1.

"The Court instructs the jury: If you believe from the evidence that the premises described in the declaration are embraced in the description of the land devised by William T. Watson to Jesse R. Watson for life, under the first clause of the will, then until the death of Jesse R. Watson the plaintiffs in this cause were not entitled to the possession of the premises in the declaration described, and there-
page 158 } fore could not bring suit to recover possession thereof until after the death of said Jesse R. Watson, and there is no evidence in this case of laches or fraud upon the part of the plaintiffs."

INSTRUCTION NO. 2.

The Court instructs the jury: In Virginia, the maxim, *caveat emptor* (look out buyer) strictly applies to judicial sales. The Court undertakes to sell only the title, such as it is, of the parties to the suit, and it is the duty of the purchaser to ascertain for himself whether the title of these parties may not be impeached or *superseaded* by some other and paramount title; and if he should have just ground of objection for want or defect of title, he should present them to the Court before the confirmation of the sale. *the sale.*

page 159 }

INSTRUCTION NO. 2.

The Court instructs the jury that under the first item of the will of William T. Watson, Jesse R. Watson took a life estate in the land whereon the said William T. Watson resided at the time of his death, except a small parcel on the Eastern side beginning at the Eastern boundary of the land whereon he resided, and Westerly to the Eastern edge of the glade that lays to the Eastward of his back lot fence, with remainder in fee in the children of Jesse R. Watson, living at his death, who are the plaintiffs in this case.

(b) The Court further instructs the jury that this life estate of Jesse R. Watson was not enlarged by the remarriage of Elizabeth Watson, widow of William T. Watson, under the fifth clause of said will.

(c) The court further instructs the jury that any person claiming any part of the land above described, devised to Jesse R. Watson, under the will of William T. Watson whether by deed directly from Jesse R. Watson, no matter if there be a general warranty of title, or through intermediate conveyance, even if my special commissioner appointed by the Court, cannot claim an estate for longer than the life of Jesse R. Watson.

(d) The Court further instructs the jury that after the death of Jesse R. Watson, the children of Jesse R. Watson living at his death, on the 27th day of November, 1931, who are the plaintiffs in this case, became at once seized of and entitled to the possession of the land above described, no matter in whose possession it may have been on that date.

page 160 } (e) So that if you believe from a preponderance of the evidence that the defendant, R. A. Keas, is holding the premises mentioned and described in the plaintiffs' declaration, and that the said premises in said declaration are embraced in the description of the land devise by William T. Watson to Jesse R. Watson for life, it being a part of the land on which William T. Watson resided at his death, and if you further believe from the evidence that Jesse R. Watson died on the 27th day of November, 1931, leaving surviving him as his only heirs at law, his children, who are plaintiffs in this case, then you must find for the plaintiffs.

Which Instructions No. 1, No. 2 and No. 3 asked for by the plaintiffs were granted by the court, to which action of the Court in granting said instructions 1, 2 and 3 the defendant excepted, as follows:

Mr. J. Brooks Mapp: If your Honor please, we object to Instructions No. 1, No. 2 and No. 3 on the ground that under the will of William T. Watson, deceased, dated April 12, 1858, Jesse R. Watson was devised a fee simple estate in the real estate given him by his father, William T. Watson, provided Elizabeth Watson, widow of Jesse R. Watson remarried; that the undisputed evidence shows that said Elizabeth Watson did remarry; that the undisputed evidence shows that Jesse R. Watson conveyed the real estate, of which that involved in this suit is a part, by deed with general warranty of title and that the defendant in this suit as ultimate assignee of said Jesse R. Watson therefore owns the real estate involved in this suit in fee simple. This objection applies to page 161 } Instructions Nos. 1, 2 and 3, and to each and every part of said instructions.

NOTE: Thereupon the defendant offered his Instruction A, which was granted by the Court, without objection on the part of the plaintiffs, as follows:

INSTRUCTION A.

“The Court instructs the jury that the plaintiffs can recover in this action only on the strength of their own title. It does not matter whether the title of the defendant is defective or not, the question is not whether the defendant had title to the land in this suit mentioned, but whether the plaintiffs have title thereto.”

NOTE: Thereupon the defendant offered his Instruction B1, C and D, which instructions asked for by the defendant were granted by the court to which action of the court in granting said instructions B1, C and D the plaintiffs excepted.

INSTRUCTION B1.

“The Court instructs the jury that the possession by the defendant of the land in controversy (since the death of Jesse R. Watson November 27, 1931), is *prima facie* evidence of his title thereto. And in order to entitle the plaintiffs to recover in this action, they must show they have legal title to

the land, and without such proof the jury must find for the defendant, whether defendant has any title or not."

INSTRUCTION C.

"The Court instructs the jury that one in *bona fide* possession of land, is presumed to have the legal title
page 162 } until the contrary is shown, and therefore, if they believe from the evidence that the defendant Keas, was at the institution of this suit in *bona fide* possession of the land in dispute, claiming under a deed for the same, the said Keas is presumed to have the legal title to said land until the contrary is shown."

INSTRUCTION D.

"The Court instructs the jury that if they believe from the evidence that the boundaries of the land in dispute or the identity of said are in such doubt and uncertainty that they cannot say whether or not said land was or was not devised by William Watson to his son, Jesse Watson, then they must find for the defendant."

NOTE: The defendant then offered his Instructions B and E, which instructions were excepted to by the Plaintiffs, and refused by the Court:

"The Court instructs the jury that the possession by the defendant of the land in controversy is *prima facie* evidence of his title thereto. And in order to entitle the plaintiffs to recover in this action, they must show they have legal title to the land, and without such proof the jury must find for the defendant, whether defendant has any title or not."

"The Court instructs the jury that if they believe from the evidence that the widow of William Watson, deceased, remarried after the death of said William Watson, it is the duty of the jury to find for the defendant."

page 163 } JUDGE'S CERTIFICATE.

I, John E. Nottingham, Judge of the Circuit Court for Accomack County, Virginia, who presided over the foregoing trial of Mary Holland, et als., vs. Robert A. Keas, do certify that the foregoing is a true and correct copy or report of the testimony and other incidents of the said trial tried

in the Circuit Court of Accomack County, Va., beginning June 16, 1932, and ending June 17, 1932, except Exhibits introduced by the Plaintiffs, being plat marked "C", referred to on page 18 of MS. record, blueprint marked Exhibit "H", referred to on page 17 of MS. record plat, marked "Y" referred to on page 22 of MS. record, and survey made by J. Caulk, Surveyor, marked Exhibit "I" and referred to on page 24 of MS. record, and Typographical plat marked Exhibit "J", and referred to on page 33 of MS. record, and it is agreed by the Plaintiffs and Defendant that in lieu of certifying copies of the exhibits referred to as a part of the foregoing record, the originals shall be transmitted by the Clerk of this Court to the Clerk of the Supreme Court of Appeals. And I further certify that the attorneys for the plaintiffs had reasonable notice in writing of the time and place when said report of the testimony and other incidents of the trial would be entered and presented to the undersigned for verification.

Given under my hand this 5th day of August, 1932, within sixty days from the time at which the judgment complained of was rendered.

page 164 }

JNO. E. NOTTINGHAM,
Judge of the Circuit Court for Accomack
County, Virginia.

I, John D. Grant, Jr., Clerk of the Circuit Court for the County of Accomack, Virginia, do certify that the foregoing report of the evidence and other incidents of the trial of the case of Mary Holland, et als., vs. Robert A. Keas, together with the original exhibits, being plat marked Exhibit "C", blueprint marked Exhibit "H", plat marked Exhibit "Y" plat marked Exhibit "I" and plat marked Exhibit "J", herein referred to, were filed and lodged with me as Clerk of said Court on the 5th day of August, 1932.

JOHN D. GRANT, JR.,
Clerk of the Circuit Court for Accomack
County, Virginia.

State of Virginia,

County of Accomack, towit:

I, John D. Grant, Clerk of the Circuit Court for the County of Accomack, in the State of Virginia, do hereby certify that the foregoing is a true transcript of the record and

proceedings in the suit of Mary Holland et als. against Robert A. Keas, pending in said Court, with the exception of Exhibits C. and Y, being plats which were forwarded along with the record in the previous suit brought by the same plaintiffs against James T. Powell, with the exception of Exhibits H, I and J, being plats which were delivered along with this transcript in lieu of copies, pursuant to the order of the Judge of said Court. And I further hereby certify that page 165 } the Attorneys for the plaintiffs have been duly notified of the intention of the defendant to have the foregoing transcript of the record made out. The cost of the foregoing transcript is \$14.10, and is charged to the defendant.

JOHN D. GRANT, JR., Clerk.

A Copy—Teste:

H. STEWART JONES, C. C.

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