1889-002 Chancery Causes: Emanuel Turner vs Lewis C. Turner
Isle of Wight County Petition of Lewis C. Turner

other SURNames: Clements

Wright- p.c.

Emanuel Turner

v. } In Chancery

Lewis C. Turner

Bill & Exhibit 'A'

March Rls. 1886
Bill & exhibit filed. Sum. issd.
& day. nisi.
Feb Rls. Bill taken
for confd. & set for
hearing.

Oct. Term 1887.
Set for hearing in
vacation.

April Term 1888.
Is to be heard in Vacation

Nov. 11th 1889. Bill dismissed
decree suspended 90 days.

and that the said Deed is null and void.
But as Your Orator is without remedy in the premises save by the aid of a Court of Equity where such matters are alone and properly Cognizable and relievable, he prays that the said Lewis C. Turner, may be made a party defendant to this Bill, and required to answer the same upon Oath, fully and particularly; that the said Deed may be declared null and void, and that such other relief may be granted Your Orator as his Case may require, or to Equity may seem meet; and Your Orator will Ever pray &c-

Jno. A. Wright P.Q.

Nansemond County, to wit:

I Jno. A. Wright, a Notary Public for the said County do certify that Emanuel Turner whose Bill of Complaint is written above, personally appeared before me & made oath that the Statements Contained therein, are true to the best of his knowledge, information and belief.

Given under my hand this 26th day of Jan 1886-

Jno. A. Wright N. P.

trary to Your Orator's Expectation, he recovered from his severe illness, and from that time to the present has provided by his own efforts for the maintenance of his children named in the said Deed, and the said Lewis C. Turner has never rendered any part of the service contemplated by said Deed in the maintenance of said Children, and which was the Consideration specified therein for said Conveyance. But the said Lewis C. Turner has taken possession of the said land, claiming title thereto under the said Deed, and denies to Your Orator all rights therein.

Now Your Orator is advised and believes therefore alleges, that when the said Lewis C. Turner signed and sealed the said Deed (a copy of which is herewith filed as part of this Bill, marked "A") he distinctly understood, as did Your Orator, that said Deed was not to take Effect until after Your Orator's Death, and that thereafter, the said Lewis C. Turner should provide for the maintenance of Your Orator's Younger Children, named therein. On the Contrary, Your Orator alleges that the said Lewis C. Turner has never done any thing towards providing for said Children, but has refused to do any thing of the Kind, and yet claims the proceeds of the said land. Your Orator for this reason alleges a failure of Consideration

To How. Geo. Blow, Judge of the Circuit Court of Isle of Wight County.

Complaining sheweth unto Your Hono. Your Orator Emanuel Turner of the said County, that on the 21st day of March 1871, Your Orator, being then Extremely ill, and not Expecting to survive, and being solicitous for the welfare of his Younger Children, who would by his death be left in a helpless and dependent condition, Executed a Deed to his oldest Son, Lewis C. Turner, for a tract of land of One hundred acres, in the said County, the said Lewis C. Turner, signing and sealing the same, by which Deed the said Lewis C. Turner, was to take charge of the Children named therein, in consideration of the said Conveyance, and feed and clothe them until they should be able to provide for themselves. Your Orator would not have made the said Deed except in his ~~Extremity~~, and when all hope of his recovery had been abandoned, and for the sake of his Younger Children. It was not his intention that said Deed should take Effect until after his death, which was then daily Expected. But it so happened that the said Lewis C. Turner took possession of the said Deed and had the same recorded in the Clerk's office of Isle of Wight County Court. Con-

Turner
vs
Turner

Petition for an
injunction &c.

AND MADE OATH THAT THE STATEMENTS CONTAINED IN THE FOREGOING PETI-

TION ARE TRUE TO THE BEST OF HIS KNOWLEDGE, INFORMATION, AND BE-

LIEF.

GIVEN UNDER MY HAND THIS 30th DAY OF April 1333

Geo. M. Cooke

NOTARY-PUBLIC.

HON. C.W.HILL JUDGE OF THE CIRCUIT COURT OF ISLE OF WIGHT CO.

YOUR PETITIONER, L.C.TURNER RESPECTFULLY REPRESENTS:

THAT HE IS THE DEFENDANT IN THIS CAUSE EMMANUEL TURNER VS. L. C.TURNER AND IS IN LAWFUL POSSESSION OF THE LANDS IN THE BILL AND PROCEEDINGS MENTIONED. THIS FACT IS ADMITTED BY THE BILL. AND BEING THUS IN POSSESSION YOUR PETITIONER SAYS HE IS ENTLILED TO THE USE OF THE SAME UNTIL THE MATTERS AND QUESTIONS IN SAID SUIT ARE SETTLED AND DETERMINED BY THIS COURT. BUT YOUR PETITIONER SAYS THAT HE IS BEING DISTURBED IN THE USE OF THE LAND BY THE PLAINTIFF EMMANUEL TURNER AND ~~HIS~~ SOME OF HIS SONS; THAT Emmanuel Turner SAID HAVE SINCE THE INSTITUTION OF THIS SUIT BEEN ON SAID LANDS TAKING TIMBER THEREFROM AND COMMITTING WASTE; THAT THEY HAVE ACTUALLY PULLED DOWN A PART OF THE FENCE; AND THAT A FEW DAYS AGO SAID EMMANUEL TURNER AND HIS SON JEREMIAH WERE IN THE ENCLOSED PART OF SAID LAND ATTEMPTING THEN AND THERE TO PREVENT YOUR PETITIONER FROM CULTIVATING SAID LAND:

SPRING TIME IS NOW HERE AND YOUR PETITIOMER DESIRES TO PLANT HIS LAND IN SOME CROP OR CROPS, AND TO THAT END HE PRAYS THAT AN INJUNCTION MAY BE AWARDED RE-STRAINING SAID EMMANUEL TURNER ,HIS AGENTS, ATTORNEYS AND EMPLOYES FROM FROM PASSING OR REPASSING OVER THE ENCLOSED PART OF SAID LAND, FROM TAKING THEREFROM ANY TIMBER, FROM OTHERWISE INTERFERING WITH YOUR PETITIONER IN CULTIVATING SAID LAND UNTIL THE SAID CAUSE OF "TURNER VS. TURNER" IS SETTLED AND DETERMINED FINALLY.

L C Turner

VIRGINIA.

COUNTY OF ISLE OF WIGHT, TO WIT:

Geo. M Cowles

I, ~~W.S.HOLLAND~~, A NOTARY-PUBLIC IN AND FOR SAID COUNTY DO CERTIFY THAT L.C.TURNER CAME BEFORE ME IN MY SAID COUNTY

Turner

vs Exchange

Turner

Defendants Answer

Virginia.

Emanuel
Turner &c.
vs } In the Cir. Court of Isle of Wight Co.
Turner L. & &c

The defendant by his attorney comes and says that the plaintiff's bill is not sufficient in law

R. E. Bolling
& p. d.
W. S. Holland

Jacques Emmanuel
Du Chay
Curtius Lemale

Défendeur assigné

of his own knowledge are true and so far as made on knowledge or information derived from others, he believes them true.
Given under my hand this 5th day of April 1886.

R E Bayliss
Comm in Chy

of himself and family, and thus the premises
the said Emanuel Turner to sell the timber
on the said land for the sum of $200.00 and
dollars and apply the proceeds of said sale
to the support of himself and family.
This defendant denies that the said deed is void
and void or that there was want or failure of
consideration, on the contrary this defen-
dant alleges that the said deed is good and
valid and based upon a good subsisting
consideration.
And further answering this defendant
says that if it be true that the deed afore-
said is void by reason of the failure of consid-
eration as in said bill alleged, which this
defendant denies, he is entitled to be allowed
for the permanent improvements placed by
him upon the premises.
And having answered the bill prays to be
dismissed with his costs in this behalf
most unreasonably expended.
Lewis C. Turner

State of West Virginia County of Davis, to wit:
I, R.E. Boyers a
Commissioner in Chancery for the Circuit
Court for the County aforesaid in the State of
Virginia, do certify that Lewis C. Turner whose
name is signed to the foregoing answer, per-
sonally appeared before me in my said
County, and made oath to the statements
contained therein so far as made

that upon the death of the said Emanuel Turner he is ready and willing to perform and fulfil his contract & that he has the children of the said Emanuel Turner namely said and until they arrive to an age to maintain & take care of themselves, and that there is no failure of the consideration of said deed. This defendant is informed and so charges, that the said contract of your complainant & that of the said children of Emanuel Turner, after his death, until they arrived to an age to take care of themselves, was for its value a contract of hazard and is not subject to the same rules of law governing cases of failure of consideration.

And this defendant says, that the husband and widow is entitled to dower of the said land & a third of $150.00 per acre.

That he has built thereon a dwelling of the cost of $300.00 and has expended $75.00 in out-buildings and improvements of the nature, and has & did the same on the said land from the date of said deed.

And although this defendant was in legal possession of said land and had the same in fee simple under said deed, he has permitted and allowed the said Emanuel Turner, with the exception of 9 acres so cleared by this defendant, and the yard and garden, to cultivate the said land, and to take the rents and profits for the support

possessing and disposition. and this defendant
avers on the day of the execution of the said
deed, the said Emanuel Turner was at
the residence of the aforesaid a distance
of miles, and this defendant ~~denies~~ ~~and~~ ~~avers~~ ~~it~~ ~~is~~ ~~true~~ ~~that~~ ~~he~~ ~~was~~ ~~not~~ ~~present~~ ~~at~~ ~~the~~ ~~execution~~ ~~of~~ ~~the~~ ~~said~~ ~~deed~~ ~~by~~ ~~the~~ ~~said~~ ~~Emanuel~~ ~~Turner~~ ~~and~~ ~~that~~ ~~he~~ ~~did~~ ~~not~~ ~~sign~~ ~~it~~ ~~as~~ ~~a~~ ~~witness~~ ~~thereto~~ ~~at~~ ~~the~~ ~~request~~ ~~of~~ ~~the~~ ~~said~~ ~~Emanuel~~ ~~Turner~~ ~~or~~ ~~in~~ ~~his~~ ~~presence~~ ~~and~~ ~~that~~ ~~he~~ ~~did~~ ~~not~~ ~~sign~~ ~~it~~ ~~as~~ ~~a~~ ~~witness~~ ~~thereto~~ ~~at~~ ~~the~~ ~~request~~ ~~of~~ ~~the~~ ~~said~~ ~~Emanuel~~ ~~Turner~~ ~~or~~ ~~in~~ ~~his~~ ~~presence~~ or under his direction.
This defendant denies that it was the intention
of the said Emanuel Turner, or this defendant
that the said deed should not take effect until after the death
of the said Emanuel Turner, but that the said deed
should not take effect until after the death,
or that this defendant took possession of
the same and had it recorded in the Clerks
office of the County Court of the County afore-
said; on the contrary this defendant alleges
and it appears from the certificate of the
Clerk of the County Court of said County, that
the said deed was acknowledged before him
for the purpose of registration by the said
Emanuel Turner in person, and was proved
as to this defendant by two witnesses, to
original of said deed, with the certificate
of the Clerk annexed is herewith filed
marked A and prayed to be read as a
part of this answer.
This defendant admits it is true that he
has not paid and clothed the said children of
the said Emanuel Turner, although he has
largely contributed to their support as herein-
after mentioned, as his liability to pay and
clothe the said children by the terms of the
said deed, did not accrue until after the
death of the said Emanuel Turner, who is
still living.
And further answering this defendant says

In the Circuit Court of the County of Isle of Wight.

The answer of Louis H Turner to the Bill of Complaint in said Court exhibited against him by Emanuel Turner.

This defendant saving and reserving all right of exception to the many errors and imperfections in said Bill contained for answer thereto or to so much thereof, as he is advised it is material or necessary for him to answer, answering says, That he admits to be true — That the said Emanuel Turner by his and bearing date March 21st 1871, conveyed to your Complainant the tract of land in the Bill mentioned, in consideration of the agreements of this defendant, to take charge of the infant Children of the said Emanuel Turner and to find and clothe them, after the death of the said Emanuel Turner, until they should arrive to the age, capable of taking care of themselves, and that this defendant signed the said deed.

This defendant does not admit, but totally denies the allegation in said Bill, that at the time of the execution of the said deed, the said Emanuel Turner was extremely ill and not expected to recover, on the contrary this defendant alleges that the said Emanuel Turner was not ill at the time the said deed was executed, and if sick at all it was but a slight one

Emanuel Turner

vs. Summons to
and Bill in
Chancery.

Lewis C. Turner

To March Rules 1886.

Jno. H. Wright Esq.

Executed by delivering
to the within named
Lewis C. Turner a
true copy of the within
Summons. July 12/1886.

Jo. A. Edmunds

The Commonwealth of Virginia,

To the Sheriff of Isle of Wight County, Greeting:

WE COMMAND YOU TO SUMMON Lewis C. Turner

to appear at the Clerk's Office of the Circuit Court of Isle of Wight county, at Rules to be holden for the said Court, on the first Monday in ~~March Next~~, next, to answer the Bill in Chancery of Emanuel Turner

~~of a plea of~~ ~~for $~~ ~~Damages $~~ And have then there this writ.

Witness, N. P. YOUNG, Clerk of our said Court, at the Courthouse, the 29th day of January 1886, in the 110th year of the Commonwealth.

N. P. Young clk.

Turner

vs } In Chancery

Turner

Depositions for Plaintiff

March 9th 1888.

Came to hand under seal and filed.

Teste, N.P. Young cc.

I Thomas J. Clements a Notary Public for the County of Dale of Wyth do. Certify That the Forgoing Depositions Were Taken and Subscribed before Me. in the Village of Windsor This the 7th day of March. 1888

Given Under My hand. This 7th day of March. 1888

T. Clements N.P.

My Com Expires.
Eight Years.
My Fee. $6.00/100

No 6.

Q 3. When did you have this Conversation with Louis C. Turner, Sr

Answ. I think it was 2 years ago. last Summer, it was the Summer before the Winter Father got the case to Mr. Wiggins

Q. 4. What is your relation to the parties to this suit.

Answ. I am the Son of the Pltff and Brother to the Defendants.

Cross Examination Waived

Q 1 State Who was present, at the time of the Conversation ~~Hon~~ alluded to, in your Examination in Chief

Answ. No. One But our Two Selves, Further This Deponent saith not.

J. E. Turner

Jeremiah Ely Turner. Being first duly. sworn. Deposes. and says as follows.

2 1 What is Your. age. Residence. and. occupation

Ans 11 My Name is Jeremiah Ely Turner. My. age. is 21 Years. Residence Shoff Wythe) county occupation a Farmer

2 2. State anything Which you may have heard. Louis C. Turner. say relative to Buying the Land in Question?

Ans 11 I have. him say. That he had. offered. $700 00/100 to My Father. for it and. ask. me if I had heard My Father say anything about. it. I had. My Father say he would take $800 00/100. for it. and. he. said before. he would give more than $700 00/100 he would. see it Burnt. to ashes. and Blown across. the Cornfield before it should go. any of us any good.

1 1

Q. 3. When. Was. it and. about What time as. near. as. you can tell. That you Wm. Lewis C Turner. offered you. Farther $100.00 for. this property

Ans. I think it was. about 2 or 3 yrs ago Last. July.

Corp. Examined without bail.

Q. 1. Who. Was. present When. L.C. Turner. offered to pay you. Farther $100.00 for. the Land in question

Ans. No one. But. Myself. Farther and L.C. Turner.

Q 2. Who. Was. present When. he offered to take $200.00/100. for. his interest in said Land

Ans. No one was present But. Myself L.C. Turner and his Wife. They Were. Both out in the Yard. crying. and. he said he. Was. going to take up his Little Babies and move.

Further this Deponent saith not.

Test
T. J. Clements

his
Emanuel X Turner.
mark

E. L. Turner. Being first duly sworn deposeth and says, as follows.

2, What is your name, age, Residence and Occupation

Ans. E. L. Turner. age 26 Last. June Residence. Out of Wise county Occupation a Farmer.

2.2 State anything you may know. about the Deed made by your Father to L. C. Turner. Or anything you may have heard L. C. Turner say about the Execution of said Deed

Ans. Well I do not know much about it, about 2 or 3 years ago Louis C Turner Wanted to Buy said land of Pa and offered Pa $700.00 for it. But he Wanted Pa to give him 5 yrs to pay for it. But Pa would not give him the time on it, and then L C Turner offered to take it for $200.00 for his right to said Land

No 5

Ans. I Know. Pa made it. Because I Know. Pa Made it. Because. I Belong to Pa as much as any Slave ~~before the~~ during the War. or. before the War.

Q. 5. Who. furnished the shingles to cover the House.

Answ. I don't. Know. Who. furnished them

Q. 6. Who. Furnished the nails?

Answ. I can't say. Who. Furnished the nails.

Q. 7. Who. Furnished the Windows & Doors

Ans. I Don't Know.

Re Examined

Q. 1. Were. you. present When. you. Father Bargained. With Captain Brothers to Cut the Lumber.

Ans. I Was. not.

Q 2. For. Whom. you Were. working When you. Hauled the Lumber.

Ans. I was working for. My. Father. And Further the Deponent saith not.

Test
T. J. Clements

his
James X M. Turner of E.
mark

Answ. Been staying with Father, and supported by my father and the rest of the family Except Louis C. Lurvey in Nov. last

Cross Examination Waived

Q 1 How old were you when the 2 story Dwelling House was Built

Answ. About Eighteen years ago I believe, I will not say positively Between 16 and 18—

Q 2 Do you mean to say that you could Read. Log. By yourself.

Answ. Certainly. I do. Louis C. Lurvey Helped me. Read

Q 3 What part of the Indenture did you give to Captain Brockway for Saving

Answ. I do not Know Sir That was. Pd. & Col Brockway Bargain

Q. 4. If you do not Know what the Bargain was. How do you Know who made the Bargain

Ans. I cant tell when it was put
thro. at the Biging of it. It
went upon the Land and cut
the Lumber. and took Pas Slaves
and Hauled the Logs. to Brothers
& Lapsleys Mill, and Sim the
Mill Sr cutting the House
pattern apart of the Lumber,
and I took it from thro and
Placed them. The House Was to
be Built, with Pas Leave,
and then Pa come up there
and Said off. the Work. Sr.
the Construction of the House
and. Helped them. Occupancy.
I C. Lurvin. cut. the Logs and
Helped to swing them. & Helped
Build the House with the assistance
of. Pa & Bro. Lewis, and Pa Rondra
Lewis, While Building the House
I Know. he. Eat his Meals. at Pas.
House. I dont Know. How much
Bout the pair (if he paid
any
2. 6. When. How Jno. Wilkins and Sisters
Who. are. Named in this Deed. been
living and. How. supported since
the Deed Was executed

Ans. My name is James M. Turner. age 33 yrs. The coming 4th of May. Resides 8 miles of this city. Occupation a Farmer.

Q. 2 Do. you Know. the parties to this suit and. What is your. relation to them

Ans. Reft My Father and the Defendant My Brother.

Q 3. Do. you. Know. anything of the Deed in question?

Ans I do not.

Q 4. Do you Know. anything about the improvements Made upon said Land since the Deed was Made if so. state What you Know. about it

Ans. I C. Turner. Has put. a smoke House. and. One. Log. Stable. I think.

Q. 5. Who. Put. the two. Story Dwelling on said Land and When was it put there

Ans. Yes.

Q. 10. You say that the Book is at Home How do you Know your age. To be Twenty Eight Years.

Ans. It is in the Book.
Read.

Q. 1 During the 2 or 3 months in the fall of 1878 Which you say you spent at L. C. Turners. What service if any did you render in his family.

Ans. Helped to Wash, Cook and fetch Coals.

Q. 2. Were you Sain or Saw Service rendered

Ans. To Sin
Further this Deponent saith Not.

Annie J Turner

Sworn to. Before me. Being first duly Sworn. Deposeth and saith as follows. What is your name age. Residence and occupation

Answ. No. sir

Q. 6. Then. D. understand you to say, that he paid you. no money paid for. no clothes or other articles or bills for the same during your. stay at your. House.

Answ. He. did not give me. anything paid no bills. —— Furnished no clothing or. other articles

Q. 7 Did you. not. visit at the House of. L C Turner. and remain as long as you. desired

Answ. I have. not. since I left there in the year 1878—

Q. 8. I understand. that you. were about. twenty Years of age. in the Year. 1878— Am. I correct?

Answ. I don't Know. sir that the Book. at Home

Q 9 Did you not state in your. Examination in Chief that you are now twenty Eight Years of age. Would you. not. then from Dates! about Nineteen Years of age. When you went to live with L. C Turner.

Answ. I did not. go. there to assist his Wife. He. did not pay me for my services I did not. loan him of my own Mine and go to Charles Hughams.

Q. 2 Did you not. in the Summer or Early Fall of 1878. go to Linn or stay at L C. Turners.

Answ. I think it was the Fall. I did go there about that Time. But. I. do not remember

Q. 3. Was. This the time you went to Linn with him. as stated in your Examination in chief

Answ. Yes. Sir

Q. 4. When. did you Leave.

Ans. I stayed Two or Three Months there

Q. 5 Did he not pay you anything or Furnish. any articles of clothing for. you. Whilst you were with him

Q. 9. Have you at anytime talked with your Brother L. C. Turner about this Deed and if so. What statements did he make concerning it

Ans. I have heard him say if Pa died my children should have to come there to live

Q 10. How long has it been since he made that statement

Ans. It has been about Eight years if not longer.

Witness Examined without Waiver

Q 11 You have stated in your Examination in chief that you were to live with L. C. Turner and that he would not let you stay and you not at the time alluded to go there to assist his wife who was then sick, did he not pay you for your services, did you not leave him of your own will and go to Mr. Charles Hufsham?

No. 3—

Q. 5— State Whether or not, You have at anytime applied to Jno. Brother L C. Turner to Live with him and if so. with what result

Ans. I went to Live with him once, and he would not Let me stay.

Q 6. How. Old. Were You. at. that time

Ans. I don't Know. But it was before I became of age.

Q. 7. Do. You. Know anything of the Building of the House on this Land and who. Built Them

Ans. Pa. and Brother Louis Built the Dwelling or 2. Story House

Q. 8. Have. You. at. anytime since this Was. made. recind any agistance of any Kind from Jno. Brother L C Turner.

Ans. I Have not.

Nancy J. Turner. Being duly sworn
Deposes. and says as follows.

Q 1. What is your Name Residence & Occupation

Ans. Nancy J. Turner. age. about 28. Jan,
Portsmouth, Scioto Co.

Q 2. What Relation are. you to Emanl.
Turner. and the Defendant L C
Turner.

Ans. L C. Turner. is my Brother and
the Plaintiff is my Father.

Q 3. Do you Know. anything about
What Was. your Fathers. fisical
condition in the Jan. 1877—
When the Deed was made by
him to L. C. Turner.

Ans. He. Was. sick it is all. I Know.

Q 4. Where. Were. you living at the time

Ans. I Was. living at. Home with my
Father.

1 1

Land conveyed by you to L C Turner
and sawed by Bockmon & Lapsley
one half for the other or on shares

Answ. Yes.

Q 5. Was not the timber cut and the lumber
sawed after said conveyance

Answ. Yes.

Q. 6. Were there any other Workmen employed
in the Building of the said 2 Story
House other than your son L. C
Turner and yourself.

Ans: None Such. to. my. Knowledge and anything
he could not do, the Rest of
the boys helped.
Remaining

Q 7. Who made the contract with
Bockmon & Lapsley for cutting the
timber And for Whose acct.

Answ. He made it and for my own acct
Further this Deponent saith not.

his
Witness Emanuel X Turner
mark
T. Clements

~~Q.~~ Cross. Examin Withone Nairn

Q. 1 In. answer to question No. 2. You say. You were in a slow. condition at the time of the Execution of the Deed. filed with the Complainants bill. State When. and Where said Deed. was. signed by you

Answ. At. Josiah P. Gay's. Tillmouth and Josiah P Gay was. Witness to said Deed I do not remember What else the Deed recites

Q 2 How. far. is it from the place you then resided to J. P. Gay's House

Answ. It is a little over one mile

Q. 3. Did you. walk. or. ride

Ans. I Don't remember.

Q. 4. You state. in answer to question No 7. You state that you furnished the Lumber to Build the 2 Story House was. not this Lumber. cut from the

Ans. He has acc. the Lay & cupts, ~~since~~ the suit was. Entered Shave paid repairs of the Lay.

2.6th Who. prepared the Deed. made. by you.

Ans. Thomas Clements.

2.7 What improvements have been put on the Land. since the Deed was made by Whom. ~~the~~ they were put there, and at. Whose. expense

Ans. There has. been a two story House put there. & furnished acc the timbers, and. was. Bob Workman. and he Workmen under Me. he had some Workmen. as any at. each. in his life before. He. Bought ~~the~~ six 12 Light Windows and the Doors. and he got the shingles and the nails. and. there was a House. at the time the Deed was. Executed. 18 × 20. good as new. Wholy by myself. I was. at acc. the expense of. the 2 Story, Kitchen it was. being Built. & for the Workmen.

2 5 How much Has Lewis C. Turner ever contributed toward the Maintainance of the Children named in said Deed

Answ. Not one cent.

2.4 How much has he ever paid you in consideration of said Deed

Answ. Not one cent.

2.5. Since this Deed was made Who has been in the possession of the Land.

Answ. I and he both, he one part & the other part, and he cultivated the part he has cleared since; I cultivated the part that was cleared when I made him the Deed. I told him at the time he cleared his part he might have all he made, and I to cultivate the Balance.

2.6th Who has paid the Taxes since the Deed was made.

Answ. I paid one half and he paid the other. (agreed to pay one half as he wanted to get some Rail Road ties to get some doors. Cash.

Lake them raise them and clothe them on the Land and he agreed as it so and gave him a deed But I ought to have it put in the deed If I raise them myself. than he has not to have the land I thought if my son C Turner dies not as Begins by the children or Grandchildren by one no one Else Buried

Excepted to by the Defendant For reasons contained in the Exceptions to question No 2 and further reason That is not responsive or relevant to the allegations in the bill It is here agreed by Counsel on both sides that Counsel on both sides may make any and all exceptions to each and every question and answer contained in these depositions as if said exception was noted and the reasons therefor set out specifically at the end of each question and at the end of each answer - that any question of law may be thus raised at the hearing of this cause in Court.

Q. 2. At the time the Deed was made by you to Louis C. Turner please state what was your physical condition and the motive for making said Deed

Exception by the defendant.
The defendant by his Counsel excepts to the above question because the motive leading to the Execution of said Deed is inadmissable for any purpose whatever; because by the rules of Evidence a sealed instrument cannot be contradicted altered or added to or varied by parole testimony And for further reasons by agreement of Counsel this Exception to be applied and considered as applying to all subsequent questions.

Ans: I was in a slow condition and debt. Thought I should live very long and had four young Children I began to consider what would become of them and L. C. Turner was the only one that was free, and I thought he would do as good a part by them as anybody and so I asked him if he would

No 1

The depositions of Emanuel Turner and others, taken before me, this 7th day of March 1888, pursuant to notice hereto annexed, to be read as evidence in behalf of Emanuel Turner, in a suit in Chancery pending in the Circuit Court of Isle of Wight County, wherein the said Emanuel Turner is Plaintiff & Lewis C. Turner is Defendant.

On the 16th Day of February, 1888, the Day named in the notice, R. E. Boykin, atty for Dft, being absent on account of sickness, the taking of these depositions was, by consent, adjourned to the 7th day of March, and now on this 7th day of March, are begun -

Present Jno. H. Wright atty for Plaintiff
R. E. Boykin } " " Defendants
W. S. Holland }

Emanuel Turner, the Plaintiff being first duly sworn, deposes and says as follows:

Q 1 What is your name, age, residence and occupation, and are you one of the parties to this suit?

A. Emanuel Turner - age - 76 - Isle of Wight county - Occupation Farmer & Carpenter - and I am the Plff in this suit.

Turner
vs
Turner
} In Chancery

Notice to take Depositions.

Excepted to, returning to open for the written interrogatories of Daniel Lewis Turner Jan 30th 1888

Chas Thomas
Dept Sheriff

John H. Wright,

Attorney and Counselor at Law,

Subscriber to Sloan's Legal and Financial Register and Member of the Continental Collection Union.

Suffolk, Va., ... 188

To Lewis C. Jones:

Please take notice that on Thursday the 16th day of February 1888, before Thomas J. Clements Esq Notary Public in the village of Windsor Isle of Wight County Va. between the hours of 6 O'clock and 6 O'Clock P.M. of that day, I shall proceed to take the depositions of Emanuel Jones and others to be read as evidence in behalf of the Plaintiff in a certain suit in Chancery depending in the Circuit Court of Isle of Wight County in which the said Emanuel Jones is Plaintiff and You are Defendant. And if from any cause the taking of the said depositions be not begun, or being begun they be not completed on that day, the taking of the same will be adjourned and continued from day to day or from time to time, at the same place and between the same hours until they are completed.

Respectfully

Emanuel Jones

By Counsel.

Jan 24th 1888.

Ans

Of my own Knowledge I know nothing ~~to the Contrary~~. In passing I frequently saw L C Inscoe & his brothers working, sometimes at one place and sometimes at the other

And further this deponent saith not

T. J. Clements

Virginia
Isle of Wight County to-wit.
I, C.A.P. Abbitt a Notary Public ~~for~~ in the County of Isle of Wight & State aforesaid do certify that the foregoing depositions of Thos J Clements were duly taken sworn to and subscribed before me at the time and place and for the purpose in the caption hereto mentioned
Given under my hand this 7th day of April 1888

C.A.P. Abbitt N. Public

Time two & half hours

farmers about the time allowed
tenants on the land they may clear.
Ans I believe the general rule is to
give all they may make for three years.
4th Q How long has L C Turner been cul-
tivating the land which he cleared?
Ans I dont know the number of years.
The knowledge which I possess is from
hearsay.
5th Q Did any one help him in clearing
the land & if so, who?
And I have no knowledge who helped
him in clearing said land.

Reexamined
1st Q You have been asked about
aid in ~~budding~~ clearing the land
Is it not a fact that L C Turner
for a year or more during the
time the land was cleared was
living in his fathers family aiding
his father in working his land and
his father & brothers in turn aiding
him and is it not a fact also
that L C Turner was then more than
twenty one years old?
(Question excepted to because leading
and suggestive in form)

11th Q Please state as nearly as you can how much wood land has been cleared and reduced to cultivation by L. C. Turner on that piece of land?

Ans My attention has not been called to that specially but from general observation some six or ten acres.

12th Q What would be the cost per acre of grubbing, draining and fencing such land?

Ans I dont know that I am a judge of such but at the rates I frequently have to pay for such land being put in such condition about fifteen or twenty dollars per acre.

13th Q

Cross Examined

1st Q On what part of the farm is the land cleared by L. C. Turner?

Ans The first on the west side of the home field. Second, in the rear of the home field. It adjoins other lands that was already cleared and is only separated by a fence

2nd Q Was it high land or swamp?

Ans Medium high land.

3rd Q What is the general rule among

written I delivered it to Mr Emanuel Turner

8th Q Please state whether L C Turner was present on the occasion when the deed was drawn?

Ans He came with his father, he was present at the writing of the deed and heard all that was said in regard to it and went away with his father.

9th Q You have said that the deed was drawn by the dictation of Emanuel Turner Please state whether or not L. C. Turner had any thing to do with how the deed was drawn in any way whatever?

Ans If so it was not made known to me.

10th Q Please state any thing you may know as to who built the dwelling house now occupied by L. C. Turner?

Ans I passed them frequently and saw Lewis C Turner at work on the building and frequently saw his father present ~~I do not know~~ superintending. I dont know that I ever saw him shoving a plane or using a hammer. I do not mean to say that he did not

Now please state if you know who drew the deed, when it was done and at whose request?

Ans In regard to the day and date the paper must show for itself. I drew it by request of Emanuel Turner and by his dictation at my place of residence.

4th Q How far did Emanuel Turner live from your residence?

Ans Within a fraction of two miles.

5th Q How did he come to your residence on that occasion?

Ans He walked

6th Q What was the condition of his health at that time?

Ans I do not know but he was complaining as usual and as old men usually complain.

7th Q Do you know who witnessed the deed and who carried it to the Clerks office to be recorded?

Ans Myself and Josiah P Gary and I have some doubt whether or not Jno M Ballard witnessed it also as he was living with me at the time. I do not know who took it to the Clerks office. After it was

The Deposition of Thos J. Clements ~~Lewis~~ ~~Turner~~ and others taken before me C A P Abbitt a Notary Public for the County of Isle of Wight pursuant to notice hereto annexed in the office of C A P Abbitt Witness in Isle of Wight County to be read as evidence in behalf of Lewis Turner in a certain suit in Equity depending in the Circuit Courts of Isle of Wight County wherein . is defendant and is plaintiff

Present Wm S Holland atty for defendant
and Jno H Wright " " plaintiff

The Witness Thos J Clements being duly sworn deposes and says

Q 1st State your name age residence and occupation

Ans Thos J Clements, age 56 yrs, Isle of Wight County, farmer by occupation

Q 2nd Do you know the parties to this suit?

Ans I do

3rd Q From the papers in this cause it appears that on the 21st day of March 1871 Emanuel Turner made a deed to L C Turner ~~conveying~~ conveying certain property therein named

Jones

vs / In chancery

Jones

Decree for hearing
in vacation -
To be entered
C Noble
Oct 20th 1887

We consent to this
order
Jno H Wright S.C.
R E Bryan p.q.

Filed
No. 3

Emanuel Timms
vs } In Chancery
L. C. Timms -

On motion of the Plaintiff and by consent of parties this cause is set for hearing in vacation

Simms

vs

Simms

April 21st 1888.

Decree

To be entered

C Bartlett

We Consent to this
Jno. N. Wright & Co
Boykin & Nicholls
Att'ys

Entered # 11.

Turner Emanuel
vs
Turner L. C.

This cause come on this day to be heard on the bill of complaint and exhibits filed therewith, on the demurrer and motion to dismiss and answer with general replication thereto and on the depositions of witnesses and documents read in open court in consideration whereof and by consent of parties entered of record in open court the court doth order adjudge, and decree that this cause be made a regular cause and heard in vacation on notes of argument filed by the attorneys of the parties hereto.

Turner

vs } In Chancery

Turner

April Term 1888

Decree

April 5th 188

Entered May 12th 1888.

C M Hall

Entered #19.

TURNER.

VS.

TURNER

THIS CAUSE CAME ON THIS DAY TO BE AGAIN HEARD ON THE PAPERS FORMERLY READ AND ON THE PETITION OF THE DEFENDANT THIS DAY FILED, AND WAS ARGUED BY COUNSEL ON CONSIDERATION WHEREOF THE CORT DOTH ~~ORDER~~ ADJUDGE, ORDER AND DECREE THAT AN INJUNCTION BE AWARDED THE SAID PETITIONER IN ACCORDANCE WITH THE PRAYER OF HIS PETITION, RESTRINING SAID EMMANUEL TURNER , HIS AGENTS, EMPLOYES AND ATTORNEYS FROM PASSING OR REPASSING OVER THE ENCLOSED PART in the bill and proceedings mentioned from said land OF SAID LAND, FROM TAKING ~~THEREFROM~~ ANY TIMBER, AND FROM OTHERWISE INTERFERING WITH SAID L.C.TURNER IN CULTIVATING SAID LAND UNTIL THE SAID CAUSE OF "TURNER VS. TURNER" IS FINALLY SETTLED AND DETERMINED. BUT BEFORE THIS DECREE SHALL TAKE EFFECT THE SAID L. C. TURNER OR SOME ONE FOR HIM SHALL ENTER INTO BOND before the clerk of this court WITH SURETY DEEMED SUFFICIENT BY THE CLERK OF THIS CORT IN THE PENALTY OF $ 200 payable to Circuit Ct. Yd CONDITIONED TO PAY ALL COSTS AND DAMAGES THAT MAY BE AWARDED AGAINST HIM IN CASE THIS INJUNCTION IS DISSOLVED, IT IS ORDERED THAT A COPY OF THIS DECREE BE FORTHWITH SERVED ON EMMANUEL TURNER AND ON JEREMIAH TURNER, A SON OF EMMANUEL TURNER BY THE SHERIFF OF THIS COUNTY WHO SHALL MAKE RETURN THEREOF.

damages that may be awarded against him in case this injunction is dissolved, it is ordered that a copy of this decree be forthwith served on Emanuel Turner and on Jeminah E. Turner, wife of Emanuel Turner by the Sheriff of this County who shall make return thereof.

A copy, Teste,

N. P. Spivey clk.

Executed by delivering to the within Named Emanuel Turner & Jeminah E. Turner each a true Copy of the within Summons May 3rd 1888.

Rc. A. Edwards

Sheff

Turner E.

v.

Turner L. C.

The Board agrees by this decree to an extension.

Sept. N. B. Young Jr

In Isle of Wight Circuit Court. April 30 1888.

Turner Emmanuel Pltff

v. } In Chancery

Turner L. C. Dft

This cause came on this day to be again heard on the papers formerly read and on the petition of the defendant this day filed, and was argued by Counsel. On Consideration whereof the Court doth adjudge, order and decree that an injunction be awarded the said petitioner in accordance with the prayer of his petition restraining said Emmanuel Turner his agents employees, and attorneys from passing or repassing over the enclosed part of said land in the Bill and proceedings mentioned, from taking from said land any timber, and from otherwise interfering with said L. C. Turner in enclosing said land pending the said cause of "Turner vs. Turner" is finally settled and determined but before this decree shall take effect the said L. C. Turner or some one for him shall enter into Bond before the Clerk of this Court payable to Commonwealth of Virginia, with surety deemed sufficient by the Clerk of this Court in the penalty of $200. Conditioned to pay all costs and

Turner, Emanuel

vs

Turner, Lewis C.

Order for hearing
in vacation -
To be Entered

Apr 20th 1889 -

C H Dodd

Entered #12

p

James
vs
James

This cause came on this day and by Consent of Counsel, ~~the hear-~~ ~~ing of~~ the same is set for hearing in the City of Norfolk, in vacation on Wednesday the 12th day of June 1889.

Lumber Enrolled

78.

Turner L. C.

Nov. 11th 1889

Decree

To be entered

Nov 11. 1889

Entered #6

Turner Emanuel

vs,

Turner L. C.

This cause come on this day to be again on the bill of Complaint the demurrer there to by the defendant, on the defendants answer with general replication, on the depositions of witnesses and on exhibits with the bill, answers and depositions filed and was argued by counsel for both plaintiff and defendant, on consideration whereof the court being of opinion that the allegations of the bill are not sustained by the evidence doth adjudge order and decree that the bill be dissmissed and that the defendant recover of the plaintiff his costs in this behalf expended and that the clerk of this court issue execution therefor,

On motion of the plaintiff this decree is suspended for ninety days provided the said plaintiff or some one for him shall execute before the clerk of this Court in the penalty of $300.00 and together with a good as required by law conditioned to indemnify said defendant and any other person such as may sustain against all costs and damages by reason of said suspension in case no supersedeas be awarded by the appellate court.

Emanuel Turner

L. C. Turner

W. A. YOUNG, OFFICE OF THE CLERK.

Clerk of the Corporation and Circuit Courts

— OF THE —

City of Norfolk, Va.

....., 188

Emanuel Turner

vs.

L. C. Turner

Contracts of hazard are not favored — the presumption is against them — they must be established by clear and cogent proof —

Watson v. Hoy 28 Grat 704

Benton v. Humphreys 75 Va. 198

Authorities cited
by
defendant's Counsel

Authorities cited by Holland:

II Miner's Inst. p. 589 seq.

3 Randolph 504 Thompson vs Jackson

2 Vol. Annual Digest page 280

Turner Emanuel

To 2 Copies Deed.

Turner Louis C.

"A"

T. J. Clements -
Josiah O. Gay.

Lewis C. Turner

In Isle of Wight County Court Clerk's Office
April 3rd 1871. This Deed from Emanuel
Turner to Lewis C. Turner was received
& acknowledged by Emanuel Turner to
be his act & deed & proved as to Lewis C.
Turner by the witnesses T. J. Clements and
Josiah O. Gay. & having the requisite United
States Internal revenue Stamps of fifty cents
affixed hereto & cancelled, is admitted to
record.

Test, R. A. Hart. D.C. for
A. D. Young

A Copy
Test,

A. D. Young Clk.

This Deed, made this the 21st day of March, 1871.
between Emanuel Turner of the County
of Isle of Wight & State of Virginia, of the
first part, and Lewis C. Turner of the afore-
said County, and State of the second part.
Witnesseth: that in consideration of Lewis
C. Turner of the second part, doth bargain
and agree with Emanuel Turner of the
first part, to take charge of his children
and to feed and clothe the same, after the
death of the said Emanuel Turner afore-
said until they arrive to the age & capable
of taking care of themselves, viz: Nancy J
Emanuel, Lafayette, Juniella and Jeremi-
ah Eley Turner. The said Emanuel
Turner aforesaid doth bargain and sell
unto Lewis C. Turner, and to his heirs
forever, for said services rendered to said
children, one tract, piece, or parcel of
land, containing by estimation one hun-
dred acres, more or less, and bounded by
the lands of John Duck, Abram Duck,
John C. Thomas and Delilah P. Johnson,
The said Emanuel Turner doth warrant
the rights & title to said land, and defend
the same generally. Witness my hand & seal
this the day above written.

Test.

Emanuel Turner (Seal)

trustee and from holding otherwise interfering with said L. C. Turner in obtaining said lease until the said cause is finally settled and determined. Now if the said L. C. Turner shall pay all costs and damages that may be awarded against him in case the said restraining order is dissolved then this obligation to be void or otherwise to remain in full force and virtue.

L. C. Turner [Seal]
W. S. Holland [Seal]

In the Clerk's office of the Circuit Court of Wythe County, the 30th day of April 1888. This Bond was received and acknowledged by the obligors to the same and admitted to record.

Test: A. D. Young Clk.

A Copy Test: G. M. Dodson D.C.

Turner &c.
v. Clerk &c.
Turner L. C.
Bond in lieu of injunction
order dismissed
April 30 1888.
Copy.

Know all men by these Presents that we, Lewis C. Turner and William S. Holland are held and firmly bound unto the Commonwealth of Virginia in the sum of Two hundred Dollars, to the payment whereof we and every of us bind ourselves and each of us, our and each of our heirs, Executors and Administrators jointly and severally firmly by these Presents. Sealed with our Seals, and dated this 30th day of April One Thousand Eight hundred and Eighty Eight. And we hereby waive the benefit of our Homestead Exemption as to this Obligation and we also waive any claim, right or privilege to discharge any liability arising under this Bond in any currency, funds, Credits, Claims or Offsets other than legal tender currency of the United States. The Condition of the above Obligation is such, that whereas upon the petition of L. C. Turner defendant in the suit of Emmanuel Turner v. L. C. Turner now pending in the Circuit Court of Isle of Wight County, the Judge of said Court has decided and ordered that the said Emmanuel Turner his Agents, Employees and Attorneys be restrained from passing or trespassing over the inclosed part of the land in the Bill and proceedings mentioned, and taking from the said land any