1900-007
Nansemond Co (Suffolk) Chancery Causes: Thomas J. Thompson vs Reps Williamson et al

Gale, Smith, Williamson, Harrison, Carr, Sullivan, Deans

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Reps Williamson Oyster Inspector and S J Thompson

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the First Monday in April 1900, to answer a Bill in Chancery, exhibited against them in the said Court by S J Thompson

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this 29th day of March, 1900, in the 124th year of the Commonwealth.

A copy—Teste:

_____, CLERK.

Teste:

A P Gomer, CLERK.

In the Circuit Court of Nansemond; Nansemond County To Wit:
In Vacation March 28th 1900.

T J Thompson. Petitioner.
vs. In Chancery.
Reps Williamson Oyster Inspector and T J Thompson Defendants.

An Motion of the petitioner is awarded him enjoining the said Reps Williamson, Oyster Inspector for Nansemond County, and all his deputies, servants, and agents and others persons from assigning or attempting to assign to any persons or persons as Oyster planting grounds any part of the Northern edge of the Channel or "Slatterly Basin" and any part of said River (the same for which an application for an assignment has been made by T J Thompson) or any part thereof to any agents or assigns or tenders of the said T J Thompson to any other person not lawfully entitled thereto, and T J Thompson from assigning any of said grounds, until the further order of this Circuit Court of Nansemond County or the Judge thereof in vacation. But before the petitioner shall have the benefit of this injunction order, he or some one for him shall enter into bond with sufficient surety in the penal sum of $150.00 payable to the Commonwealth of Virginia and conditioned to pay all such costs as shall be awarded against the said petitioner and all such damages as shall be incurred by any one by reason of this injunction, should this injunction be dissolved. Which bond dismissed as provided by the Clerk

To the Clerk of the Circuit Court of Nansemond.

Robert R Prentis Judge

A Copy Teste; O B Gomer Clerk

I O B Gomer Clerk of the Circuit Court of Nansemond County do hereby certify that the bond required by the above injunction order has been given with security thereon.

Teste; O B Gomer Clerk

Executed this the 29th day of March 1900 By delivering a true copy of the within summon unto a copy of the injunction order attached to the summon Emma Thompson a female over the age of sixteen years and informing her the purport of said T J Thompson and giving her information not found at his usual place of abode.

R E Roper Clerk Dep
To A B Baker S.S.F.K.

Executed in Nansemond County the 29th day of March 1900 By delivering a true copy of the within Injunction order attached to the summon unto Emma Thompson a female over the age of sixteen years and informing her the purport of said T J Thompson and giving her information not found at his usual place of abode.

J F D Berry Deputy
To A B Baker Sheriff

R W Withers p. q.

T J Thompson

vs. } In Chancery.

Reps Williamson
Oyster Inspector

1900

April Rules.

First Monday.

Nansemond Circuit Court.

Process Book No. 21

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Know All Men by These Presents, That we, Thomas J. Thompson and James N Smith

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of One Hundred and fifty ----DOLLARS, to the payment whereof, well and truly to be made to the said Commonwealth, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the said Commonwealth arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of said Commonwealth.

Sealed with our seals, and dated this 29th day of March in the year of our Lord one thousand ~~eight~~ nine hundred and ----, and in the 124th year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas an injunction is awarded the petitioner against the defendants Reps Williamson Oyster Inspector and S J Thompson on an injunction filed in the Clerk's Office of the Circuit Court of Nansemond County enjoining and restraining Reps Williamson Oyster Inspector and all his deputies servants and agents and others persons from assigning or attempting to assign the ten acres mentioned in said order and also S J Thompson from occupying any of said ground until the further order of the Circuit Court of Nansemond County or the Judge thereof in vacation. But before the petitioner shall have the benefit of this injunction order he or some one for him shall enter into bond in the penal sum of of $150. payable to the Commonwealth and conditioned to pay all such Costs as shall be awarded against him and all such damages as shall be incurred by any one by reason of this injunction, should this injunction be dissolved. The petitioner shall give security in the bond deemed sufficient by the Clerk of this Court

SEAL

SEAL

Thomas J Thompson SEAL

James N Smith SEAL

SEAL

In the office of the Clerk of the Circuit Court of Nansemond County, on the 29th day of March 1900 ~~189~~.

The above bond was executed and acknowledged by the obligors (the surety ---- justifying on oath as to his ---- sufficiency) and recorded.

Teste: A D Gomer CLERK.

A Copy Teste: A D Gomer Clerk

Thomas J Thompson

To Injunction Bond

The Commonwealth.

1900.

March 29th.

Recorded in Official
Bond Book No 1
Page 197

A Copy

Thomas J. Thompson

vs

Reps Williamson Oyster Inspector and S. J. Thompson.

The defendants demur to the bill in this case and say that the same is not sufficient in law.

Reps Willaimson

S. J. Thompson

By Counsel.

A. J. Thompson is not a renter of this ground!

=

C.V. 2137a. "No person shall be considered a renter of oyster planting ground in this state until he shall have received from the inspector a receipt for the rent in full for one year in advance and shall also have paid the fee to the inspector for assigning and the fee to the surveyor for the survey and plat."

= If an assignment of this ground was ever made, it was made in Sept. '96 (Rec. D-21-7).

That it was made: Surveyor's part receipt; testimony of A. J. T. (p. 22) and receipt of rent 97-8.

That it was not made: no plat; no stakes; no return of rent to treasurer; indefiniteness of receipt. Rent not paid in advance. Wilson not surveyor; no C.O. of rent paid in 96-7. (advance)

But even if made, it was irregular and void. no notice was ever posted of the application; Wilson has never been the Co. Surveyor, no plat made or recorded; rent not paid in advance; part-rent, if ever collected, was not returned to Slade.

=

Even if the assignment of 1846 were regular in every particular — yet by failing to plant oysters, keep stakes up and pay rent in advance, S. J. T. has lost his rights to the ground & can no longer be considered a renter. — abandonment. Dog in the manger —

= ∴ S. J. T. ~~was~~ is not a renter of this ground, R. Wms says J. J. T. would have the better right to it. (Rec. D. 14-68

= Wms thought S. T. had better right because he was a renter; if not renter — seems —; (Rec. D. 13-66) : he thought S. T. thought he had better right to it because of Wms rent. (Rec D 9. 31)

Williamson based his opinion solely on receipt of Ames. (Deans P- 37-3) Note: Wms never saw receipt of Ames until after S.J.J.'s application (Rec. D. 10 - 38-39-40) Hence he did not know, at the time of S.J.'s application that S.J. was a renter or occupant of this ground - and S.J.'s statement is true - that RW did promise to assign the ground to him.

If Sam J. never received a proper assignment of this ground, and is not a "renter" - by what right does he claim it? 2d point C, 2, sup § 21 -. "Better right" We have already seen that S.J. does not hold this property "under a proper assignment".

No "cyathus acetabulum, planted thereon".

Inspectors called on to locate grounds Feby 14. S.J.J. never had land designated, ascertained & surveyed until Mch 28 - (14 days too late). He never offered to pay the rent until about April 1st - at which time it was refused by RW.)

Why make a new assignment if ground already D.J.T's?

Why were stakes moved if ground already D.J.T's?

Why not make the new survey by the lines of the old, if there had been an old one?

Why are not the lines of the 3 acre piece now as they were when that piece was surveyed? (See Plat Book)

=Not a single witness for D.J.T. ever saw him plant any oysters on this ✓ acres except C.C.T. and he says (Rec. p 20) that they were planted last year, 1899 + 2 years before '98 - S.J.T. says he did not plant in 99 ~~these two years are the only years in which he did not~~ plant!
(Rec. 30)

="Dog in the Manger"

Depositions of witnesses, to be read as evidence for the Complainant, in the case of

Thompson vs.

Williamson, et al.

Taken April 24th 25th 26th - 1900.

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The deposition of witnesses sworn to testify in the case in which T. J. Thompson is petitioner and Reps Williamson and S. J. Thompson are defendants, pending in the Circuit Court of Nansemond County, upon an injunction, being taken at the office of R. H. Rawles in Suffolk, Va. on April the 24th, 1900, notice of time and place to take said depositions being waived by all parties. To be read as evidence in said case for Complainant. Signatures waived by all parties.

Present: R. H. Rawles, Counsel for Defendants.
R. W. Withers, Counsel for Petitioner.

T. J. Thompson, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. T. J. Thompson, 33 years, Nansemond County, Va., fisherman, oysterman and farmer. I know the parties to this suit, and am the petitioner in the injunction bill.

Q. 2- Please state what occured between yourself and Reps Williamson on or about Feb. 19th, 1900?

Ans. The ground that I asked to be assigned to me, and the ground that was promised to be assigned by Reps Williamson, was supposed to be owned by ~~S. J. Thompson~~ Stephen Saunders and W. S. Puck. But before I asked Mr. Williamson to assign me this ground, I went to the Clerk's Office and looked on the book of plats to see how much ground S. J. Thompson's plat called for, and I found only 3 acres, so then I came up town and met Mr. Williamson at the hotel. I asked him if he would assign me all ground that was not already assigned. He said he would. Then he said, "Is there any?" I said, " If the plat in

the Clerk's Office is right there must be some." He says, "Who do you have reference to, to Capt. Sam?" I says, "According to his plat there must be some." Then he asked me how much his plat called for. I says. "3 acres." He seemed to think there was more, so I asked him to go to the phone and call up the clerk's office and ask Mr. Gower to look on the plat, and he did so and in a few minutes he turned around to me and says, "You are right." I says, "Will you assign me the rest of it." He says, "I will." I asked him how he would get at that, and he said he would have to go down and survey S. J. Thompson's 3 acres according to the plat, and survey me the rest. I asked him could I depend on it. He says, "You can." I met Reps Williamson again March court day and I said to him. "How long before you will survey that ground for me?" He says, "Look here, Capt. Sam was over to my house yesterday and showed me a receipt additional to the 3 acres for 5 more." I asked him how about that. He paused and did n't say anything for a few minutes. When he did speak, he says, "it looks to me that if he has paid rent before, that he ought to have the privilege of the ground." I says, "If I had not interceded, would you have known any better than what the plat called for?" He said, "I don't know whether I would or not." Then we decided to go to the Clerk's Office. Before we parted he promised to let me have 3 days notice before further action was taken as to this ground, and I have failed to receive any.

6. 3- Please state if you applied for 5 acres of the ground claimed by S. J. Thompson, and if so, whether or not

Reps Williamson so understood your application?

Ans. I did; he did.

Q. 4- Why did you make application for this ground?

Ans. Because I found that the plat called for 3 acres and I thought there was more ground, and I wanted it.

Q. 5- About how often are you around the ground here in dispute?

Ans. Well, sometimes I am down there every other day, and several times I have been down there every day attending to my fykes, but there are times when I am not down there in a week.

Q. 6- Were you accustomed to visit this ground during last winter?

Ans. I was.

Q. 7- Please state the condition of the stakes around this ground prior to Feb. 19, 1900, and extending back to the beginning of the fall?

Ans. There were none outside of shad poles. There have been no stakes on this 5 acre piece within the last 2 years with the exception of the shad poles and one oyster stake planted about the 14th of Feb. 1900.

Q. 8- When did stakes properly marking this ground first appear on it?

Ans. About 10 days after the 19th of Feb. 1900.

Q. 9- Was this after your application for the ground to Reps Williamson?

Ans. Yes.

Q. 10- Have you ever seen around this ground any old stakes which had been cut off by the floating ice, which might have been placed there to designate boundery lines?

Ans. I have.

Q. 11- Do you know by whom they were planted?

Ans. I do not.

Q. 12- About what time do you suppose they were put there?

Ans. I should judge about 7 years ago.

Q. 13- Were these stakes on the 5 or the 3 acre lot?

Ans. There were some on both.

Q. 14- Do you know why Sam Thompson took up this 5 acre piece of ground, and if so please state the manner in which it was done?

Ans. This ground was once owned by S. L. Saunders and 8 or 10 years ago he went out of the business and gave up this ground and it was then when Capt. Sam. stuck up his stakes, the ground was originally known as Stephen Saunder's ground. I have seen Capt. Sam. working on this ground occasionally.

Q. 15- Do you know whether or not any oysters remained on this ground after it was given up by Stephen Saunders?

Ans. Well, from my own experience it is impossible to catch all oysters on the ground, so there must have been some left.

Q. 16- Was it for the purpose of taking these oysters that Sam Thompson went on the ground? (question and answer both excepted to as being irrelevent and leading)

Ans. I believe it was.

Q. 17- Have you ever seen Sam Thompson plant any oysters on this 5 acre ground?

Ans. I never have.

Q. 18- State your opportunity for seeing such work if it occured?

Ans. For the winters of the last 2 years I have averaged being about this ground every third day in the week.

Q. 19- How does Capt. Sam Thompson make a living, and about what work do you see him most?

Ans. His occupation is catching oysters. I have seen him working on this 3 acre piece of ground only plated more than anywhere else.

Q. 20- When were you last upon this 5 acre lot?

Ans. The 18th of April.

Q. 21- Did you examine the bottom of this ground at that time, if so, state the result with reference to oysters?

Ans. I got Capt. John Harrison to go down with me to examine the ground, as I did n't feel as I wanted to do it myself, or otherwise that I felt he would give better judgment as to what was on the ground, being I had applied for the ground previously. We went down there and sounded the ground and he only found oysters in 2 small places.

Q. 22- Could you form any estimate as to the amount of oysters you discovered?

Ans. Well, to the highest estimate I should say 50 bushels.

Q. 23- Did you pretty well cover the whole ground?

Ans. We did, or otherwise, we rowed back and forth from one

end to the other.

Q. 24- If these oysters had not been planted by Sam Thompson, how could they have gotten on the land?

Ans. Well, the old oysters which were left by S. L. Saunders and the shells which were left also by him give room for oysters to strike and grow which they do in that part of the river.

Q. 25- You mean then that the oysters now on the ground are the natural product?

Ans. I do.

Q. 26- When did Sam Thompson first know of voter having applied for this 5 acre tract?

Ans. Well, when Mr. Williamson told me he would assign me this ground I got Mr. Pruden to put it in the Virginian and Pilot that I had made application for all ground in New Channel suitable to plant oysters that was not already assigned.

Q. 27- Was there ever any communication between yourself and Sam Thompson as to the assignment of these 5 acres, if so, state how and when?

Ans. I went to my nephew, Mr. Hunny Gale and asked him to go to Capt. Sam and ask him if he had anything to show for this ground to say so and I would not go any further with it. I received no reply to my message. This was about the first of March, 1900.

(This question is excepted to as being heresay).

Q. 28- Is this ground now staked off, if so, describe the kind of stakes used and when they were placed there?

Ans . The stakes that are now on the ground are small stakes, as are generally used for staking off oyster ground. It was sometime after the 10th of April, 1900.

Q. 29- Please state anything you know that has any bearing on this case?

Ans. After I made application for the said ground, Capt. S. J. Thompson put some stakes there and I also stuck some 4-corner stakes and put flags on them, and before the survey was made his upper stakes were moved 70 yds. further down the river and my 2 off shore corner stakes were also moved or destroyed.

Q. 30- What was the effect on the size of the ground made by the moving of these upper stakes?

Ans. It would make the ground an acre smaller.

Cross Examined by Counsel for Defendants.

Q. 1- You say in your examination in chief that the grounds in dispute were once supposed to be owned by Stephen Saunders and N. S. Buck, why do you say they were once "Supposed" to have been owned by them?

Ans. I sold Buck a piece of this ground and I know that S. L. Saunders did plant oysters on this 5 acre tract once.

Q. 2- Was not the N. S. Buck ground just 3/4 of an acre?

Ans. It was when I purchased it, but was not when I sold it.

Q. 3- Explain how it grew to be more?

Ans. When I bought the ground it was 3/4 of an acre, it did not extend in the channel over 12 feet of water, and there was plenty of room for the line to be moved out further and which myself, S. L. Saunders and S. J. Thompson moved the line out.

Q. 4- Did S. L. Saunders ever have a recorded plat for this ground, if so, how much did it contain?

Ans. It was not the custom to have plats about that time.

Q. 5- How did you acquire your right at that time to any of this ground?

Ans. The deputy inspector, which was Mr. John Bunting, give me a paper as to the right of the piece of ground as inspector, and I have a receipt for the money paid to Capt. Sam.

Q. 6- Did you say this was about 10 years ago?

Ans. I said 8 or 10 years.

Q. 7- Did you sell all your rights out on this ground at that time?

Ans. Yes.

Q. 8- Why did you sell out?

Ans. I sold because I wanted to.

Q. 9- Did you stop oystering at that time?

Ans. No.

Q. 10- Has not S. L. Saunders since that time sold his interest out to Ben Williams?

Ans. I don't know.

Q. 11- When you first went to see Mr. Williamson in regard to renting this ground, did you not tell him that Sam. Thompson had a plat for only 3 acres according to the record in the clerk's office?

Ans. Yes, I did.

Q. 12- As a matter of fact, did you not at that time well know that your brother Sam Thompson was then occupying, cultivating and claiming 5 acres additional ground?

Ans. I did not until I came and looked at the plat which every man is supposed to have in the Clerk's office.

Q. 13- Did you not know at that time that he was claiming more than these 3 acres?

Ans. Yes. I knew he claimed it.

Q. 14- Did you know how much more he was claiming outside of the 3 acres?

Ans. I used my own judgment for that.

Q. 15- How much more was he claiming?

Ans. About 5 acres more. When a man has no stakes to designate land, he can claim little or much, or otherwise if a man has a receipt for 5 acres of land, and there is 15 around him you don't know where his line would be. This was the condition here, there were no stakes.

Q. 16- Did you not know that in the year 1896 that 5 acre tract was surveyed by Prof. Wilson for your brother Sam?

Ans. I did not.

Q. 17- Had you never heard that Prof. Wilson had surveyed it?

Ans. Not until after I had made application.

Q. 18- Is it not a fact that you knew that your brother Sam was operating on this tract of ground containing about 8 acre-

and that you went to the Clerk's Office and found there was a recorded plat for only 3 acres standing in his name and that you then determined that you would put in an application to get the remaining 5 acres?

Ans. I did it with this intention; that if Capt. Sam did not own the land that I as well have it as any other man, as I know there were others ready to apply for it.

Q. 19- No others did apply for it, did they?

Ans. There was a man came the next day to make application for the said ground, but he had found that I had already made application.

Q. 20- You say that you knew your brother was at times taking oysters from this ground and that he was claiming it, why did you not go to see him in person and find out just what his rights were?

Ans. There were family reasons why I should not apply in person.

Q. 21- When you first approached Mr. Williamson and made application verbially for this ground, did he not tell you that he would investigate and find out how much unoccupied ground there was down there and that he would assign you all unoccupied grounds?

Ans. No, he did not. It was over 15 days after that he intimated that I could not get the 5 acres.

Q. 22- Did he promise to rent you ground already occupied by any other person at that time?

Ans. He said he would assign me all ground that was not assigned, suitable to plant oysters on in New Channel.

Q. 23- Was it not necessary for him to make some investigation in order to discover whether or not the grounds that you were applying for had not already been assigned or were not already occupied by some other rentor?

Ans. He did not seem to think so, when he told me he would assign me all ground that was not assigned, I asked him how he would get at that and he said he would have to go down and survey Capt. Sam's 3 acres which his plat calls for and assign me the rest.

Q. 24- Well then, after he had seen Capt. Sam did he not tell you that he then discovered that in addition to the 3 acres recorded in the clerk's office that Capt. Sam showed him a receipt that he had paid for 5 acres more?

Ans. Yes, he said that.

Q. 25- Did you not then know from this conversation that your brother Sam had a record for 3 acres in the clerk's office and had receipts showing the payment of rent for 5 other acres?

Ans. No, I did not know it.

Q. 26- If the inspector told you so, why did you not know it?

Ans. Because he did not know how much he had himself.

Q. 27- He knew there was a record for 3 acres in the Clerk's Office, did he not?

Ans. Yes.

Q. 28- He knew that he had a receipt showing that he had paid rent on 5 acres more, did he not?

Ans. Yes, he knew it after I had made application.

Q. 29- Did you believe this statement made to you by the inspector to be the truth?

//

Ans. Yes.

Q. 30- Then why was it that if you thought that your brother was setting up this claim for these 2 tracts; one of 3 acres, and the other of 5 acres, that you should wish to obtain possession of them for yourself?

Ans. I thought and believed that he simply held possession of the ground for the privilege of catching such oysters as might be found on said ground and also I felt as though Mr. Williamson not knowing how much ground Capt. Sam held in possession and had been inspector for about 2 years that there must have been some doubt in regard to the 5 acres of land.

Q. 31- How many tracts of land are you now in possession of as leased from the Common-Wealth?

Ans. Yes. (Word illegible)

Q. 32- How many did you have last year?

Ans. None.

Q. 33- When is the last time that you did hold an assignment for oyster ground?

Ans. In 1908.

Q. 34- How many acres did you hold and where was it located?

Ans. 7 or 8 acres near Sack Point.

Q. 35- Why did you abandon this tract?

Ans. Because I got a good sale for it.

Q. 36- Is it customary among oystermen for one renter to buy out the rights of another?

Ans. Yes.

Q. 37- Then do you not think it would have been better when you found that your brother was at least claiming the

ground in controversy, for you to have first endeavored to have bought his rights, if he had any, than to have sued him out of them? (question and answer both excepted to as being irrelevant, as the parties stand here upon their legal rights and not upon any moral rights)

Ans. When I went to the Clerk's Office and found no plat for the land and also sent a message by my nephew and I got no reply, I did n't think he had any rights.

Q. 38- But the oyster inspector did not agree with you in your opinion, did he?

Ans. He did until about 15 days after the application. (We are now testing this opinion of the inspector)

Q. 39- Is it not a fact that the freezing over of the river during the winter season causes the stakes around oyster grounds to be cut off or removed so as to make it necessary to restake the ground after the winter season has passed?

Ans. The ice sometimes cuts off the stakes or mashes them down, but there are signs left of the ends stuck in the mud which will show at low tide.

Q. 40- Did I understand you to say that you had seen old stakes around the ground in controversy which had been cut off by ice?

Ans. Yes.

Q. 41- Did you see the parties who put those old stakes when they were putting them there?

Ans. No, I have witness to prove the first and only time that Capt. S. J. Thompson put any there.

Q. 42- What time of year do you usually stake off oyster ground?

Ans. When I had ground I made it a custom when a corner stake was destroyed or moved that I would replace one there.

Q. 43- As a matter of fact do you not know that these 5 acres have been continually staked in for the last 3 or 4 years?

Ans. No, it has not been staked in.

Q. 44- Did you not say that you had seen Capt. Sam Thompson working on this very ground until the year 1899?

Ans. Yes, I said occasionally I had seen him.

Q. 45- How did you know that he was working on this very ground if there were no stakes to designate it?

Ans. Well, I am accustomed to passing along this ground so often that I can almost locate any distinct part.

Q. 46- When Mr. Saunders vacated this ground 8 or 9 years ago, is it not probable that he removed all his oysters there from that he thought worth removing?

Ans. No doubt but what he did.

Q. 47- Do you know of your own personal knowledge and can you say on your oath that your brother Sam has never planted any oysters or put any shells on this 5 acre tract?

Ans. I have never seen him plant any there in my life.

Q. 48- Do you see all the oysters that are planted in Nansemond River?

Ans. I do not.

Q. 49- Then I repeat the question before the last.

Ans. No I could not say that, I only know that I have never seen him plant any there.

Q. 50- And do you now say on your oath that this 5 acre tract only contains about 10 bushels to the acre?

Ans. To the best of my judgment and to what I see Capt. Harrison catch when we were sounding the ground.

Q. 51- You say that you sent a message to your brother Sam in

references to this matter, do you know to your personal knowledge that he received that message?

Ans. I do not know to my own personal knowledge, but the messenger that I sent it by is responsible and he told me that he had delivered it, and I believe he did.

Q. 52- By whom did you send this message?

Ans. Henry Gale.

And further this deponent saith not.

John H. Harrison being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. John H. Harrison, 38 years, Reid's Ferry Va., farmer and oysterman. Yes, I know the parties to this suit.

Q. 2- About how far do you live from New Channel?

Ans. About 2 miles.

Q. 3- About how often within the last 2 years have you seen the grounds now in dispute?

Ans. In the spring, every day from about the last of March to the first of May. Sometimes I pass there in the summer in the day. In the winter I rarely ever go down.

Q. 4- State whether or not in the last 2 years you have seen any oyster stakes designating the boundary lines of the 8 acres of oyster planting ground here in dispute?

Ans. I could not say because I have not taken notice of any. They might have been there and they might not.

Q. 5- When were you last on the ground?

Ans. I don't remember the day exactly, I think it was about the 18th of April, 1900.

Q. 6- Who was with you?

Ans. Capt. Tom. T. and a colored fellow by the name of Gilbert Fulghan.

Q. 7- State what you did on these grounds?

Ans. We were all in a boat and had a pair of tongs, and Capt. Tom. proposed for me to do the sounding, so we began at the upper part of the ground and drifted down through all the way backwards and forwards from or shore to out shore line and went down to those 5 acres so Capt. Tom. said. We found 2 spots of oysters on the 5 acres and they were not very large spots and all the balance when we struck the bottom was mud; we struck one little piece of shells. They were all old oysters on there and there were some small ones there but it was the natural strike.

Q. 8- About how many oysters would you estimate were contained in the 2 spots above referred to?

Ans. That is very hard for me to say, but if there are no more except those I struck, I should take those to be about 50 bushels. When I would strike them, in spaces not more than 5 feet off, I would strike mud again.

Q. 9- Have you any reason to believe that there are any more spots of oysters on this 5 acres?

Ans. No, I have no reason to believe that there are any more. I did not find any more.

Q. 10- Did you go carefully over the whole 5 acres?

Ans. I could not say that we sounded every spot, but we went very carefully over the whole.

Q. 11- In your opinion were the oysters found on this ground a natural strike or were they plants, if the latter, how long in your opinion had they been on the ground?

Ans. Some were strikes and some were plants. The plants had been there many years.

Q. 12- Have you ever seen Sam Thompson plant any oysters on this 5 acre piece?

Ans. No.

Q. 13- If he had planted oysters on this ground within the last 3 years, would you not have known it by your sounding?

Ans. I think I would have. There would have been some left.

Q. 14- Judging from your soundings, please state whether or not there has been any large quantities of oysters planted on this ground within the last 3 years?

Ans. No, I think not.

Cross Examined by Counsel for Defendants.

Q. 1- At whose request did you come to town to testify in this case?

Ans. At the request of Mr. T. J. Thompson.

Q. 2- Did he bring you?

Ans. Yes.

Q. 3- At whose request did you go down on this ground on the 18th of April, 1900?

Ans. Capt. T. J. Thompson's.

Q. 4- Did he carry you down in a boat?

Ans. I was fishing nets and we met there together.

Q. 5- Did you get in his boat or he in yours?

Ans. I got in his.

Q. 6- In making the examination of this ground, who handled the tongs?

Ans. I did.

Q. 7- Who rowed the boat over the ground?

Ans. Capt. T. J. Thompson and Gilbert Fulgham.

Q. 8- Then is it not a fact that you sounded on just such part of the ground as he carried the boat?

Ans. Yes, but it was backwards and forwards.

Q. 9- Capt. Sam Thompson has testified that there are 600 or 700 bushels of oysters on the 3 acres of ground. How would you reconcile that statement with your statement of 50 bushels?

Ans. I should judge most of them were on the 3 acres. We did not go on the 3 acres.

Q. 10- Can you say of your own personal knowledge that Capt. Sam Thompson has not within the last 4 or 5 years planted any oysters or put any shells on this 5 acre tract?

Ans. No, I cannot. I have never seen him plant any.

Q. 11- Is it customary for men to rent oyster grounds from year to year and pay rent on the same and yet not use the ground?

Ans. They generally use it I reckon. Sometimes they might hold it without planting oysters, but this is their intention, I should think.

Re-examined.

Q. 1- Did you meet Capt. Thompson on this ground by accident

or by pre-arranged plan?

Ans. By appointment.

And further this deponent saith not.

Henry Gale, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. Henry Gale, 25 years old, Reid's Ferry, farmer, Yes, I know both the parties to this suit.

Q. 2- What relation are you to Mr. Tom Thompson?

Ans. He is my uncle.

Q. 3- On or about the 1st of March, 1900, did Mr. Tom Thompson ask you to carry a message for him to Mr. Sam Thompson, if so, please state what it was?

Ans. Yes; the message was to ask him did he have a plat to show where his ground lies.

Q. 4- Did you deliver this message?

Ans. I did.

Q. 5- Did Mr. Sam Thompson give you any reply to carry back?

Ans. No, I told him when I asked the question, to answer or not to answer it, that I did n't want to be in the case, and the subject was dropped.

Cross Examination by Counsel for Defendants.

Q. 1- Do I understand you to say that you carried this message with reluctance?

Ans. Yes, I did not want to be in it. They were both my

Uncles. I told Uncle Tom. I would deliver that one, and only that one.

Q. 2- You say that you did not want to be in the case anyway, did you suppose at that time from what Tom Thompson told you that there was about to be a case?

Ans. No, but I had an idea that there would be bound to be something when one man was interfering with something another man claimed.

Q. 3- Were you aware then that Sam. Thompson was claiming this ground?

Ans. I know he said it was his; as for knowing I do not know. And further this deponent saith not.

Mr. Ed Carr being duly sworn, deposes and says as follows;

Q. 1- What is your name age, residence, occupation and do you know the parties to this suit?

Ans. Ed Carr, 33 years, Talbot Co. farmer, I know the parties to this suit.

Q. 2- Please tell all you know in reference to the stakes on the oyster grounds here in dispute.

Ans. There was only one stake on the ground last year which was on the line between the 3 acre and the 5 acre lots of ground. I don't know whether it was an oyster or shad stake, it was well sunk in the ground. There were no other stakes put on there as oysters stakes until the last of March, when one stake was planted about Capt. Tom's fyke, and a day or 2 after the first one was put there 2 or 3 others were put there. The first was then moved down below the fyke about 50 or 70 yds. I don't think there is but one stake on the ground now, though

I am not sure.

Q. 3- Please state if you ever had a conversation with Capt. Sam Thompson regarding these stakes, and if so what he said?

Ans. Yes, I had a conversation with him this morning and Sam Thompson said he did not have the ground staked off, but that he saw no necessity for having it staked off as his plat would show the number of acres he had.

Q. 4- Did you ever see Sam Thompson tonging oysters on this ground, if so, state where?

Ans. Only once, and that was just a little above the stake which I understand to be on the line between the 3 and 5 acre lots.

Q. 5- About how far above this old stake?

Ans. About 20 steps.

Q. 6- Have you ever seen Sam Thompson plant any oysters on this ground?

Ans. No, I have not.

Cross Examined.

Q. 1- You say that you only saw one stake there last year?

Ans. Only one.

Q. 2- Did that appear to be a corner stake?

Ans. I do not know. I don't know what you call a corner stake. I do not know that it was a corner stake.

Q. 3- Are you an oysterman?

Ans. No, I know nothing about it. I never oystered in my life.

Q. 4- Are you familiar with the oyster grounds in New Channel, and the lines between the grounds?

Ans. No, I am not.

Q. 5- Do you know the line between C. C. Thompson's ground and Sam Thompson's ground?

Ans. No, I do not.

Q. 6- Do you know the line between Sam Thompson's 3 acre lot, and this 5 acre lot?

Ans. No, not exactly.

Q. 7- Is it not a fact that in winter the ice carries or cuts stakes off?

Ans. Yes, certainly it carries them off in winter.

Q. 8- Does this make it necessary to re-stake ground after the winter has passed?

Ans. I do not know about oyster stakes, but I know it does when lines are destroyed between farms.

Q. 9- Might it not be true that this ground was staked and the stakes were carried away by the ice of last winter?

Ans. It probably might be true.

Q. 10- Have you not observed closely to see if there were not a lot of old stakes around that ground which could only be seen at low water?

Ans. I have never observed closely enough to tell, it would have to be very low water to be seen.

Q. 11- Would one stake mark or designate a piece of ground?

Ans. No, I think not.

Q. 12- Then how do you account for there only being one stake on this ground?

Ans. I do not know.

Q. 13- Do you know who put this one stake there?

Ans. No.

Q. 14- Do you know who put the 2 or 3 other stakes there?

Ans. I do not know who put any stakes around this ground.

Q. 15- Do you know who changed the stakes from one place to

another?

Ans. No, I do not.

Q. 16- Is it not a fact that you pay more attention to your own business of fishing than you do to trying to find out where oyster stakes are located?

Ans. Certainly that is a fact.

Q. 17- Did you not tell Mr. Sam Thompson in the conversation this morning that you had seen many stakes around this ground?

Ans. No, I told him I had seen one and one only.

Q. 18- How often have you been on this ground for the last 4 or 5 years?

Ans. I never was there before last year in my life. I moved there the 31st of December, 1898.

Q. 19- Did you not several times see Mr. Sam Thompson working on this ground?

Ans. One time only, as I have above explained.

Q. 20- When was that?

Ans. I could not tell exactly, but it was sometime in Feb.

Q. 21- Was this one stake that you alluded to, the only one that you saw any where in New Channel?

Ans. The only one I saw any where from my net stakes to Capt. Tom's fyke stakes.

Q. 22- Did you see any other stakes belonging to any body else?

Ans. Yes, I saw Capt. Sar's stakes down the river from this old stake towards Capt. C. C. Thompson's.

Q. 23- How many did you see down there?

Ans. I could not tell you, but I think they were pretty thick.

Q. 24- Are you prepared to say on your oath that these stakes that you did see which were set pretty thick, were not around and part of this 5 acre tract?

Ans. They were 100 yards below the old stake I have spoken of.

Q. 25- What did these stakes that you have last mentioned, enclose?

Ans. I do not know exactly. I do not know how the oyster ground sets.

Q. 26- Do you know whether the 3 acres that have been spoken of were staked in or not?

Ans. I do not know.

Q. 27- Do you really know what Sam Thompson had staked in?

Ans. I could not tell you how much. I just know he had a piec he claimed there staked in, that was below the old stake spoken of before. He claimed it all but he only had a part of it staked in.

Q. 28- What do you mean by saying that he claimed it all?

Ans. All of the west clear up to Capt. Tom's fake ground.

Q. 29- Do you know exactly where these lines are?

Ans. I do not.

Q. 30- Do you know the length of this piece of land?

Ans. No, I do not.

Q. 31- Do you know the breadth of this piece of land?

Ans. No, I do not.

Q. 32- Is it not a fact that you know very little about the real piece of ground that is in dispute?

Ans. A mighty little I know; all I know is that there is one stake on it.

And further this deponent saith not.

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William Sullivan, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. William Sullivan, 37 years old, Suffolk Va. Storekeeper, Yes, I know the parties to this suit.

Q. 2- Did you ever rent any ground in New Channel?

Ans. Yes.

Q. 3- Did you ever see Sam Thompson plant or catch oysters in New Channel, if so, please state whether it was above or below your ground, and on which side of the channel?

Ans. I have seen him catch oysters, but have not seen him plant any within the last 5 years; his ground on which I saw him working was below mine on the opposite side of the channel.

Q. 4- About how far below was his ground?

Ans. About 500 yards.

Q. 5- Did he have any stakes around the ground upon which he was working?

Ans. I have seen one that he worked by with, but whether it was on the upper, lower or middle of his ground, I don't know.

Q. 6- Whose ground lies next to and above yours?

Ans. G. C. Moore's. I sold it to him, about 1 1/2 to 2 acres.

Q. 7- Whose ground lies next to the Moore piece?

Ans. Bud Smith's.

Q. 8- Did you ever see Sam Thompson either plant, cultivate, take in or catch any oysters on the ground opposite Bud Smith's piece?

Ans. I never did.

Q. 9- Do you know whose ground this was?

Ans. I do not know. I have never seen oysters planted there.

Q. 10- How long have you worked your piece of ground?

Ans. About 6 or 7 years.

Q. 11- About how frequently were you on your land or grounds, within this time?

Ans. In the month of September I would average 3 trips a week. During the Winter I was there about 4 weeks from Monday morning until Saturday night.

Q. 12- Do you know whether or not Sam Thompson claimed the ground across the channel from you and Bud Smith during the last 4 or 5 years?

Ans. I do not know. I never heard tell of it.

Q. 13- As a rule, are not the oystermen of this river familiar with the various assignments of ground in the river?

Ans. As a rule every man knows where every other man's land is.

Q. 14- Have you ever seen any stakes marking oyster planting ground on the ground across the channel from your land, Moore's land and Bud Smith's land in New Channel?

Ans. I have seen stakes stuck there but I do not know who stuck them there; I have heard Daniel Bell stuck them there, but I do not know.

Q. 15- When were these stakes stuck?

Ans. About 2 years ago.

Q. 16- As a rule, do not the renters of oyster ground cultivate and plant oysters on it?

Ans. Yes.

Q. 17- Does the mere sticking of stakes give ownership to these oyster planting grounds?

Ans. It gives him a right to it provided he has it surveyed

and pays rent on it.

Q. 18- State whether or not it is a fact that some people have been known to stake off oyster planting ground, occupy it, cultivate it, and use it without having it surveyed or duly assigned to them and for the purpose of defeating the State of her rent?

Ans. I have known people to stake in ground, never have it surveyed, never plant oysters on it, but claim it and prevent others from having it assigned to them, nor would them ever pay any rent on it.

Cross Examined.

Q. 1- Have you ever known Sen Thompson to stake in ground, occupy it, and then refuse to pay rent on it simply for the purpose of keeping other people out of it?

Ans. No, I can't say that I have.

Q. 2- Do you know how many tracts of oyster grounds Sen. Thompson has had surveyed?

Ans. No, I do not.

Q. 3- Do you know how many acres he has been occupying and claiming as his for the last 5 or 6 years?

Ans. I do not.

Q. 4- Do you know anything about the boundaries of the 3 acre tract which he had surveyed some 10 years ago?

Ans. No, I do Not.

Q. 5- Do you know anything about the boundaries of a 5 acre tract that Prof. Wilson surveyed for him about 1896?

Ans. I do not. I remember him having some surveyed, but I do not know what parts or whereabouts.

Q. 6- Do you know the boundary between Sam Thompson's oyster ground and C. C. Thompson's oyster ground?

Ans. I do not.

Q. 7- Do you know of any ground that Sam Thompson has occupied or claimed in New Channel within the last few years?

Ans. Nothing more than I have seen him working on when I was down there myself about 2 years ago.

Q. 8- Can you give the boundaries of the piece of ground that he was working on and tell how many acres it contained?

Ans. I could not to save my soul because I did not see any stakes, only just one he was working by.

Q. 9- Do you know whether he had the 3 acre tract well staked in or not?

Ans. No, I do not.

And further this deponent saith not.

Capt. J. W. Smith, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence occupation and do you know the parties to this suit?

Ans. Capt. J. W. Smith, 34 years old, Suffolk, Va. oystarman and tug boat captain, I know the parties to this suit.

Q. 2- How long have you been an oysterman in Nansemond river?

Ans. 18 or 20 years.

Q. 3- Do you own any oyster planting ground in New Channel?

Ans. Yes, 20 9/10 acres in different tracts.

Q. 4- Do you own a piece adjoining what used to be Capt. Palmer's land but is now owned by Moore?

Ans. Yes.

Q. 5- Please state whether or not Sen. Thompson owns any oyster ground near this piece and if so, about how much?

Ans. Yes, he's got a piece on the other side of the channel, but how much I don't know, but the piece he has staked in, looks to my judgment to be about 8 or 10 acres.

Q. 6- How long has he had this staked in?

Ans. Well, a portion of it, a small piece, he has had staked in about 12 years, and about 4 years ago I had a survey of my ground made and he come and stuck stakes adjoining mine. The ice took them down or they got away some way and I have n't seen them since until right here lately. The second staking in took in the remainder of the 8 or 10 acres.

Q. 7- This second staking of which you speak, which occured about 4 years ago you say adjoined your piece?

Ans. Yes, it adjoined mine. My piece extended over the channel.

Q. 8- Since those stakes were removed, have there been any more stakes around this 5 acre piece?

Ans. None that I know of, until quite recently.

Q. 9- When were the last stakes put there?

Ans. About 60 or 90 days ago, as near as I can remember.

Q. 10- About how frequently within the last 4 years have you been around this ground?

Ans. Nearly every day except Sundays.

Q. 11- And there have been no stakes with the exception of those recently placed there in that time?

Ans. No.

Q. 12- Do you know Sam Thompson?

Ans. Yes.

Q. 13- Please state whether or not you have ever seen him planting any oysters on this 5 acre piece of ground?

Ans. I have never seen him plant any oysters anywhere in my life. I have seen him about 8 or 9 years ago come up there with 2 small jags for Mr. Buck but where he planted them I don't know.

Q. 14- Who owned this ground before Sam Thompson took it up?

Ans. Capt. Stephen Saunders.

Q. 15- Did he not plant oysters there?

Ans. Yes.

Q. 16- When Saunders left, is it possible that he could have taken up all of the oysters or shells that were on the ground?

Ans. It is not possible to get all, but a party leaving ground gets all they can.

Q. 17- If oysters and shells were left in those waters for 3 or 4 years would not the natural strike accumulate around them?

Ans. Yes, every year, right much.

Q. 18- Have you ever seen Sam Thompson catching oysters from this ground?

Ans., Yes.

Q. 19- Do you know how the oysters came on the ground which he caught? ~~Came~~?

Ans. I do not.

Q. 20- Could they not have been natural strike?

Ans. Yes, they could have been but I do not know that they were. I had a strike on mine the same year.

Q. 21- Do you know anything further about this case?

Ans. I do not.

Cross Examined by Counsel for Defendants.

Q. 1- You say 10 or 12 years ago, Sam Thompson staked in a small piece of ground, did you ever see him plant oysters on that piece?

Ans. No, I never did.

Q. 2- You say 4 years ago, or thereabouts, he staked in an adjoining piece, making in all some 8 or 10 acres, did you ever see him put any shells on this additional tract?

Ans. No, I have not.

Q. 3- He is a practical oysterman, is he not?

Ans. Yes, he claims to be.

Q. 4- Can you tell why he had this ground staked in if he did not intend to put oysters or shells on it or cultivate it?

Ans. No, I cannot.

Q. 5- Is it not something unusual for a practical oysterman who makes his living by that business to stake in ground and then not plant oysters or shells on it and not cultivate it?

Ans. They do not stake it off generally, unless they want it for some use.

Q. 6- Why do you suppose Sam Thompson had both these pieces staked off?

Ans. I could not tell you.

Q. 7- You say that the ice took away the first stakes that were put around the second tract staked in, that is the usual thing, is it not for ice to cut off stakes?

Ans. Yes, it is.

Q. 8- Do oystermen frequently not have to replace stakes thus removed?

Ans. Yes.

Q. 9- You say you have seen Sam Thompson working on this ground?

Ans. Yes, I have.

Q. 10- As a matter of fact did he not claim this 8 or 10 acres as his oyster ground?

Ans. I don't know.

Q. 11- How many different tracts of land have been assigned to you?

Ans. About 5.

Q. 12- Did you always post notices at each and every time when you wanted to apply for a piece of oyster ground?

Ans. No, I did not.

And further this deponent saith not.

Capt. John H. Harrison, being duly sworn, deposes and says as follows;

Q. 1- Are you the same John Harrison which testified in this case a day or two ago?

Ans. Yes.

Q. 2- Have you ever oystered?

Ans. Yes, off and on for about 5 years.

Q. 3- Have you ever oystered on planting grounds?

Ans. I have.

Q. 4- You testified in this case before that you had visited the 5 acres of oyster planting ground here in dispute and in company with others had made soundings for the purpose of estimating the quantity of oysters on the ground and that you estimated that there were about 50 bushels of oysters there, please state whether or not you have made further investigation on the same point and if so, have you any reason to change your former testimony?

Ans. I went down yesterday in company with S. A. Oliver, Geo. E. Bunting and Edd Dowdy. We went over the ground again, Dowdy and myself making the soundings and handling the tongs, Mr. Oliver and Mr. Bunting acting as referee and umpire; I have no reason to change my testimony as it is still my opinion that there are not more than 50 bushels on the ground.

Q. 5- Did the oysters which you took up appear as a rule to be plants or natural strikes?

Ans. Some were plants and some were natural strikes -- about

half and half. The large oysters seemed to have been there some time and evidently had been planted; the young ones were natural strike.

Q. 6- Could you form any idea as to how long these old oysters had been on the ground?

Ans. I should judge some 5 or 6 years; probably more.

Q. 7- In making these soundings were the oysters found in large or small patches, as a rule?

Ans. Up just below a fyke there, you would strike a patch about 10 feet square, then you find a patch about 3 or 5 feet --- all between is mud, then you can put your tongs down and strike what sounds to be oysters but which are really scattered shells, and when the tongs are driven into them, you catch only mud and these scattered shells. To an inexperienced man such soundings would appear to be good oysters.

Q. 8- About how many oysters are usually contained in an acre of ordinarily planted oyster ground?

Ans. I could not say, some plant them thick and some plant them thin.

Q. 9- Would 800 bushels to an acre be a very heavy plant?

Ans. I would not like to say without knowing.

Cross Examined by Counsel for Defendants.

Q. 1- Was not this last investigation of this ground that was made by you on yesterday much more complete than the former one?

Ans. I do not know that it was.

Q. 2- Do you not think that a careful oysterman who would be particular in trying to get up all the oysters on a piece of ground, could take or find a 100 bushels on the whole of this 5 acres?

Ans. I do not think he could.

Q. 3- Did you not all agree on yester-day after investigating and examining this ground that it might possibly contain 100 bushels of oysters?

Ans. No, it was not mentioned to me. I was only appointed to tong.

Q. 4- When you say that 50 bushels of oysters might be found on this ground, you mean salable oysters, do you not?

Ans. I mean all oysters, but no shells.

Q. 5- How many bushels of shells do you think from your soundings might be found on this ground?

Ans. I could not say.

Q. 6- Mr. Oliver and Mr. Bunting, who were with you, have given it as there opinion that there must have been from 350 to 500 bushels, are you prepared to dispute their statement?

Ans. I suppose they are accustomed to taking up shells more than I am. I am not accustomed to taking shells up.

Q. 7- You have stated in your examination in chief that these oysters that you found there had been there to the best of your judgement for 5 or 6 years, why do you think so?

Ans. Because they are old oysters, 5 or 6 or more years old.

Q. 8- Were they plants?

Ans. Yes, I think the old ones were plants.

Q. 9- Then if they had been planted there in 96 or '97, might they not have attained there present growth during this time?

Ans. I do not think they would have been as large as they are now.

Q. 10- Would it not depend somewhat on there size when they were planted?

Ans. Yes.

Q. 11- If they had been all a good size when planted, and had been planted in '96 or '97, might they not have reached there present size in this time?

Ans. I do not think that they would, unless they had been pretty large.

Q. 12- Did you not find many small oysters there?

Ans. Yes, we found many small ones there, more small ones than we did large ones.

Q. 13- How long do you think the small ones had been there?

Ans. Some were probably last years strike, and some were before. I think the small ones are the natural strike.

Re-examined.

Q. 1- As a rule are not James River planting stock very small oysters?

Ans. Yes.

Q. 2- Can you give any estimate as to their size?

Ans. They run from 1/4 of an inch to 1 1/2 inches long -- What we call James River seeps.

Capt. Geo. W. Dean, being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. Geo. W. Dean, 42 years, Suffolk, Deputy Inspector under Reps Williamson Inspector, I know the parties to this suit.

Q. 2- Please state the substance of a conversation you had relative to an instruction given you by the inspector as to a survey to be made of oyster planting ground to be assigned Sam Thompson in New Channel, had with T. J. Thompson at the wharf in Suffolk about the last of Feb. or first of March?

Ans. I saw Tom Thompson's advertisement in the paper and I mentioned it to Mr. Williamson and Mr. Williamson said Why Tom Thompson has told me that Sam Thompson has 10 or 12 acres staked in down here in the river, and that he is only paying taxes on 3 acres, and asked that the balance outside of the 3 acres be assigned to him. he said he did not have his books with him, so did not know how much ground he had but if this were true, then he should survey the 3 acres off to Sam Thompson and let Tom Thompson have the balance. On the following Monday, I saw Williamson down at Sleepy Hole and he told me that Capt. Sam Thompson had been to see him and showed him receipts for 8 acres that he had been paying on and of course he would be obliged to let Capt. Sam ~~for~~ have 8 acres as he had receipts for same and let Capt. Tom ~~for~~ have the balance.

Q. 3- Then Williamson decided that Sam Thompson should have

the ground because he held a certain receipts for 3 acres?

Ans. Yes.

Q.4 - Are you an oysterman?

Ans. Yes, I have been.

Q. 5 - Have you ever planted oysters?

Ans. Only for other people.

Q. 6 - About how many oysters does an acre of planted ground contain?

Ans. It depends entirely on how they are planted.

Q. 7 - About how many were on the grounds that you planted for others?

Ans. The ones I planted were planted thin, and we put about 2000 bushels to the acre.

Cross Examined.

Q. 1 - You are familiar with the grounds at New Channel, are you not?

Ans. I am.

Q. 2 - Have you not in fact, during the last 3 or 4 years been passing those grounds very frequently coming up and down the river?

Ans. Yes.

Q. 3 - Is it not a fact that you have seen those grounds staked in with oyster stakes?

Ans. There has always been a line on the outside, I noticed that particularly because in running down of a dark night the New Channel is a bad place and I am guarded by these.

Q4 - You know the difference between new shed stakes and old oyster stakes, do you not?

Ans. I should say yes, indeed I do.

Q. 5- Are you not prepared to say then that the stakes around this tract of oyster ground or along this line that you have spoken of were old oyster stakes?

Ans. Yes, they were.

Q. 6- Have you not seen Sam Thompson often working on this piece of ground?

Ans. I have seen him working all along there, I could not swear to any particular point but all along up and down that ground.

Q. 7- How many years have you seen him there working there?

Ans. He has been working around there some 12 or 15 years.

Re-examined.

Q. 1- Do you know the boundary line between Sam Thompson's 3 acre plat and this 5 acre piece?

Ans. I do not.

Q. 2- Do you know the boundary line between the 3 acre plat and C. C. Thompson's ground?

Ans. I do not.

Q. 3- Can you state on oath that the oyster stakes referred to in your cross examination are not the stakes marking the boundary line of C. C. Thompson's ground or Sam Thompson's 3 acre ground?

Ans. I can only tell you that those stakes bound that ground where I have seen Capt. Sam Thompson working.

Q. 4- Is this also the same ground which Capt. Sam was working with the "Torment?"

Ans. No, the "Torment" was worked below this ground, and that was many years ago.

Q. 5- Is the land upon which you saw Capt. Sam working, the

land which his brother William formerly owned?

Ans. I do not know.

Q. 6- Was it in the "Four Puck" ~~land on which~~ that you saw Capt. Sam working?

Ans. No.

Q. 7- Are you prepared to say that Capt. Sam was working on the 3 acre piece?

Ans. I do not know the difference between the 3 acre piece and the 5 acre piece.

Q. 8- Can you recall whose land lay across the channel from the upper stake on this line referred to by you?

Ans. Rud Smith's and N. S. Puck's ; I don't know who else.

Q. 9- When did you see the stakes?

Ans. These stakes I have before alluded to have been there every summer for the last 4 or 5 years as it was customary for people to restake there ground after the winters had passed.

Q. 10- Were you present when the inspector made the last survey there about the first of April?

Ans. I was not.

Q. 11- Do you know how the present boundary lines of this ground compare with the stakes you have been talking about?

Ans. I do not.

Q. 12- If it were in testimony that the 5 acre piece of ground had not been staked in within the last 5 years and also that the 3 acre piece of ground had been staked in and worked by Sam Thompson, would you not say that the stakes which you saw marked the 3 acre and not the 5 acre piece? (This question is objected to because it is leading and

because there is testimony here to show that this 5 acre tract has been staked in and therefore the question in that shape might possibly mislead the witness)

(Plaintiff's counsel contends that the question is not leading because the witness ,though he is his witness, is hostile, and the premise to the question is hypothetical and is founded upon testimony in the case)

Ans. I could not say that.

Q. 13- Could not the stakes have been the boundary line for the 3 acres of ground?

And. I could not tell.

And further this deponent saith not.

The depositions of Reps Williamson and others taken at the office of R. H. Rawles, in Suffolk Virginia by consent of all parties plaintiff and defendant to be read as evidence in behalf of the defendant in the case of T. J. Thompson vs Reps Williamson & others, now pending in the Circuit Court of Nansemond County, said depositions being taken on the 19th day of April, 1900.

Present: R. H. Rawles, Counsel for Defendant.
R. W. Withers, Counsel for Plaintiff.

Reps Williamson, being duly sworn, deposes and says as follows:

Q. 1- Please state your name, age, residence, occupation, and whether you know the parties to this suit?

Ans. Reps Williamson, 45 years, Nansemond County, farmer, and oyster inspector for Nansemond County. I know all the parties to this suit.

Q. 2- How long have you been oyster inspector for this county?

Ans. About 3 years.

Q. 3- Will you state whether there are many pieces or tracts of oyster ground in your jurisdiction that require your attention?

Ans. Yes, a great many. About 100.

Q. 4- Will you state what is the nature of your duties as such inspector?

Ans. To assign, rent, and assign unoccupied grounds, collect rent, issue licenses, assess oyster planters, collect taxes on the same, and look after violators of the law, and see that the ground is staked, and other incidental duties.

Q. 5- How do you determine or find out whether ground is unoccupied or not?

Ans. When a man makes an application for ground, I investigate and see that no one else has it in charge, have him to stake it off, have a county surveyor to survey and make plat.

Q. 6- If, when an application is made to you for ground, and upon investigation you found that the ground was already occupied by another rentor, or that it had already been assigned, what would you then do?

Ans. I would let the man who already had the land continue to hold the same.

Q. 7- Will you state whether or not much discretion on your part is required in assigning and letting out these grounds?

Ans. Yes.

Q. 8- In what manner is discretion required on your part?

Ans. Well, in a case where there is any dispute, I would have to investigate the matter; see who has the most right according to my judgment.

Q. 9- Then is it a matter requiring both judgment and discretion on your part?

Ans. It is.

Q. 10- The plaintiff, T. J. Thompson, in his bill charges that on some day in Febuary, 1900 he made application to you for about 10 acres of land in New Channel in Nansemond River. Please state whether this is true or not, and if so, why it was you did not assign him said ground?

Ans. T. J. Thompson did apply to me some time in Febuary for the piece of land in question. I told him that I would investigate and see if no one else had the land in possession, and if no one else had it in possession, would have it surveyed and give him plat for same; but, having investigated, I found that Mr. S. J. Thompson had receipts showing that he had paid rent on said ground, thinking that he had the better right, I had ground surveyed for S. J. Thompson, and would have assigned the same, but was prevented by bill of injunction.

Q. 11- The bill also charges that at the time that T. J. Thompson applied to you for this ground that you declared to him that the same was not occupied by or assigned to any other person. What have you to say about this?

Ans. I did not make any such declaration.

Q. 12- The bill also charges that you then undertook and promised to lay off and assign the said ground to T. J. Thompson. What have you to say to this?

Ans. I did so only on these conditions; provided that his brother S. J. Thompson did not have a better right to said ground.

Q. 13- After T. J. Thompson made this application to you, what was the first step that you took?

Ans. I saw S. J. Thompson and wanted to know about his ground, and how much he had, and he produced receipts showing me that he had about 8 acres at New Channel, it being the same ground that T. J. Thompson had applied for.

Q. 14- Do you know whether at that time S. J. Thompson had this ground staked in, or otherwise designated?

Ans. Yes, he had it staked.

Q. 15- You say that S. J. Thompson exhibited to you receipts showing that he had rented this ground previously. Did he have any other inspector's receipt except yours?

Ans. Yes, he had receipt of J. W. Ames deputy inspector under J. T. Capps, who was the former oyster inspector and my predecessor in office.

Q. 16- Do you know how long S. J. Thompson had been renting and occupying these grounds?

Ans. Only by receipt of J. W. Ames dated 1897-1898, if I mistake not.

Q. 17- You say in your answer in this case that S. J. Thompson has paid you rent for the said ground for the year beginning September '98 and ending Sept. '99. What have you to say as to

this, now?

Ans. Yes, he has paid it.

Q. 18- Do you know whether he holds your receipt for the same or not?

Ans. Yes, for $5.00, and I told him he could pay balance for year 1899-1900 this spring and I would give him an official receipt.

Q. 19- Was he then in possession of this ground?

Ans. He was.

Q. 20- What was the reason then that you did not assign it to T. J. Thompson?

Ans. Because after having investigated the matter, I decided that S. J. Thompson had the better right according to my judgment.

Q. 21- When a party is in possession of a tract of oyster ground which he has had and paid rent for, for several years, do you require him each year to make a formal application again for the same and post the same at the court house door, as you would a new applicant for unoccupied ground?

Ans. No, I do not.

Q. 22- Please tell us the reason why you do not?

Ans. Because his having the land in possession is evidence enough in my mind that he is entitled to it without making a formal application.

Q. 23- Did I understand you to say that you had had the ground surveyed for S. J. Thompson?

Ans. I have, and have plat for same in my possession.

Q. 24- Will you please file said plat as a part of your evidence in this case?

Ans. I will. (said plat is herewith filed and marked exhibit "A" in this case).

Q. 25- Do you know why it was that S. J. Thompson wanted a new survey of this ground?

Ans. Well he told me it was in two bodies and he wanted the whole lot put in one plat.

Q. 26- Are you required to give a bond as oyster inspector, and if so, have you given such bond and for what amount?

Ans. Yes, I have given bond for $5,000 as oyster inspector.

Q. 27- Have you any personal reasons why one of these parties should have this ground any more than the other?

Ans. None whatever.

Q. 28- You have said in your answer that you always endeavor to exercise sound judgment and discretion in the discharge of your duties in such a manner as to protect the rights of all and to infringe on the rights of no one. How about that?

Ans. I endeavor always to do that.

Q. 29- Have you any other statements to make in regard to this matter?

Ans. I know of nothing else.

Cross Examined by Counsel for Plaintiff.

Q. 1- Does not the law require that you as oyster inspector shall assign unoccupied oyster planting grounds which are not natural rock to the first regular applicant therefor, and leaves no discretion on your part?

Ans. Yes, it does, but the piece of ground in my judgment was already occupied.

Q. 2- Does not the law define who shall be considered a rentor of oyster ground, and bind you in this respect?

Ans. It might be so, but I have not read it.

Q. 3- In determining who are occupants of oyster planting ground, do you not go to your record as a primary source for such information?

Ans. I have never had a cause to do it.

Q. 4- Are you not required to keep a record of oyster ground rentors?

Ans. If so I have never been informed, but I keep a list of the rentors and also the number of acres that they have.

Q. 5- You stated in your examination in chief, that whenever a question arises as to the ownership of ground, that you "investigate" and see that no one else has it in charge, please state what you mean by investigate?

Ans. I have to make inquiries to know if any one has it.

Q. 6- From whom do you inquire?

Ans. From parties who are holding land adjoining the piece applied for.

Q. 7- To whom did you inquire in this case?

Ans. Mr. S. J. Thompson and his brother C. C. Thompson, who holds land adjoining this piece.

Q. 8- What did Mr. C. C. Thompson tell you regarding this land, when you made inquiry of him?

Ans. He told me it was certainly S. J. Thompson's, that he had had it in possession for several years.

Q. 9- Then as I understand your testimony, it amounts to this; that when an application is made for ground, you ask the applicant himself and his friends or kinspeople whether or not he holds the ground legally, without regard to the records which the law requires that you shall keep. State whether or not this is true?

Ans. I do not make any such statement.

Q. 10- Did you not virtually do this in this case?

Ans. I did not. His brother was the only man who had the ground adjoining this piece, consequently I had no one else to ask, I mean C. C. Thompson.

Q. 11- Does not Bud Smith own or occupy a tract of land close to or adjoining the land here in dispute?

Ans. Well, according to my understanding about it, his is on the other side of the channel; just across the channel -- opposite.

Q. 12- You did not inquire of Mr. Smith?

Ans. I did not. I did not think it was necessary.

Q. 13- What did your records disclose as to the ownership of this land?

Ans. On the list from the former inspector to me as inspector, showing that S. J. Thompson held the piece of ground in question.

Q. 14- Did this record state that the ground occupied by S. J. Thompson was 3 acres or more?

Ans. 5 acres.

Q. 15- Did this 5 acres include all of the land occupied by S. J. Thompson?

Ans. No, he has a plat at the cherk's office for 3 acres besides this.

Q. 16- Is there a plat in the Clerk's Office for this 5 acre lot?

Ans. Not to my knowledge.

Q. 17- Do you know of your own knowledge that this 5 acre tract was ever surveyed and assigned to S. J. Thompson?

Ans. I do not. I only know that he holds receipts for the year 97-98.

Q. 18- State when you were last upon these grounds?

Ans. About the 28th of March, 1900.

Q. 19- When were you there before this date?

Ans. I don't remember exactly. I was over there to see Thompson about his rent some time in the fall.

Q. 20- When you were there in the fall do you know whether or not the land was staked in?

Ans. Only that S. J. Thompson told me it was. Of course he showed me the stakes, but a man can't remember all these things so long.

Q. 21- Do you know of your own knowledge whether S. J. Thompson has ever planted any oysters on the 5 acre piece?

Ans. I do not.

Q. 22- When T. J. Thompson made application to you for this ground in Febuary, 1900, and he incidentally told you that S. J. Thompson claimed this ground, did you not express surprise that S. J. Thompson should make this claim, stating in effect that you had no knowledge of this ground being occupied and had received no rent for the same (witness is here put upon his guard as to is answer).

Ans. I do not remember any such statement.

Q. 23- You state in your examination in chief, that you told T. J. Thompson when he applied for this ground that you would investigate and see that it was unoccupied; you also stated that in the fall before you had visited S. J. Thompson in regard to his rent for this ground, for what purpose did you wish to investigate?

Ans. To satisfy the request of Mr. T. J. Thompson.

Q. 24- Then you knew at the time of this application of T. J. Thompson that the ground was occupied by S. J. Thompson?

Ans. Well, of course I knew that S. J. Thompson had it, but I told T. J. Thompson of grounds that were not occupied at New Channel

Q. 25- Did you not know that he was applying for the land here in question?

Ans. He applied for the ground that was not occupied by any one else.

Q. 26- Why did you not tell T. J. Thompson at this time that the land was occupied by S. J. Thompson?

Ans. From his statement made to me I thought it was best to investigate.

Q. 27- You say that upon investigation you found that S. J. Thompson had this land staked in, and had receipts showing that he had

paid rent on the same. Please state what receipt this was?

Ans. Receipt of John W. Ames, deputy under John T. Capps, the former inspector and my predecessor.

Q. 28- When did S. J. Thompson pay you any money as rent for this ground?

Ans. I cannot remember, but my receipt will show.

Q. 29- Why was this rent not included in your report to the treasurer for the year 1898-99?

Ans. Because he had not paid in full.

Q. 30- Does the law give you the privilege of either accepting a part payment of rent or in accepting and holding and not reporting to the treasurer?

Ans. I don't know what the law does about it, but I have done so on several occasions.

Q. 31- Why did you consider that S. J. Thompson had the better right to this land?

Ans. Because he had it in possession and had already paid rent on it.

Q. 32- What do you mean by in possession? You have already stated that you did not know whether he had planted oysters on the ground or not, or whether to your own knowledge he had it staked in.

Ans. Because he had receipts showing he had paid rent on this piece of ground.

Q. 33- When did S. J. Thompson pay his rent for this ground for the year 1899-1900?

Ans. He has not paid it.

Q. 34- After this application of T.J. Thompson had been made to you, is it not a fact that S. J. Thompson came to your house and sought you instead of your visiting him regarding this property?

Ans. He came to see me on one occasion, yes.

Q. 35- Is not this occasion of which you speak the first time you talked with Sam Thompson about this land after the application made by Tommie Thompson?

Ans. No, he spoke to me when I saw him in regard to his rent, and told me that he wanted his ground surveyed and put in one body. Mr. Ames, the other inspector had promised him several times to have it surveyed but had failed to do so.

Q. 36- Did I not understand you to say that the time you saw S. J. Thompson regarding this rent was in the fall of '99?

Ans. Yes.

Q. 37- Then this conversation of which you spoke occured before the application of T. J. Thompson?

Ans. Yes.

Q. 38- Then this time when S. J. Thompson came over to see you was in fact the first time you had talked with him about this land, after T. J. Thompson's application?

Ans. I think so.

Q. 39- Is it not a fact that during this conversation he showed you the receipt for rent paid J. W. Ames?

Ans. Yes, he showed it to me on that occasion.

Q. 40- Is this not the first time you had ever seen this receipt?

Ans. I think so.

Q. 41- Was it not because of this receipt that you concluded that S. J. Thompson had a better right to this ground?

Ans. Not altogether. I had other reasons.

Q. 42- Please state your other reasons?

Ans. Because he had paid me part rent for '98-99. I promised him if he would pay me for the time mentioned, I would wait on him until the spring for the balance. I mean I promised him that if he would pay me for the year September '98-Sept. '99, that I would wait for him for the rent for Sept. '99-1900. This conversation occured in the fall of 1900.

Q. 43- Has S. J. Thompson ever paid you the balance due for the year '98-99?

Ans. He has not. He has offered to pay me as he had promised, but owing to this controversy I would not accept the money until this was settled.

Q. 44- When S. J. Thompson came to see you regarding this land, did he not claim to be the occupier of this land at that time, and was not this practically all of the testimony that you had which brought you to the conclusion that he had the better right to it?

Ans.- It was not. Another reason I had was because C. C. Thompson who is the brother of both the plaintiff and the defendant and who occupied adjoining grounds told me that he knew that S. J. Thompson was occupying that ground, had oysters planted there, and considered it his.

Q. 45- You state in your examination in chief that you saw Sam Thompson and asked him how much ground he had. Is it your custom to rely upon the statements of occupants as to the number of acres occupied by them?

Ans. It is not.

Q. 46- You state that you keep books for this purpose, do you know how many acres this book showed as being occupied by Sam Thompson?

Ans. When the former inspector gave me a list of the number of acres rented and by whom; S. J. Thompson had assigned to him, 5 acres.

Q. 47- Is this all of the land upon which he paid you rent?

Ans. It is.

Q. 48- When he paid you rent, did he designate the land for which the rent was paid?

Ans. He did not. I took it for granted that he was paying on the land he had in possession.

Q. 49- Did you apply this rent to the 3 acres legally assigned to S. J. Thompson contiguous to this 5 acres and for which he has a duly recorded map in Nansemond county Clerk's Office?

Ans. I gave him credit on the books for $5.00 which he paid me in the fall of '99.

Q. 50- Should this $5.00 not be applied to the 3 acres assigned him?

Ans. At the time he paid me that I did not know anything about the 3 acres at the Clerk's Office.

Q. 51- How did you know about the 5 acres?

Ans. Because it was turned over to me from the other inspector.

Q. 52- Are you prepared to say that the 3 acres recorded in the Clerks Office are not included in the 5 acres reported by your predecessor in office?

Ans. Yes, I am prepared to say it is not. The receipt is already filed which shows that.

Q. 53- How did you find the courses and distances of this plat?

Ans. By the stakes that Sam Thompson had put there.

Q. 54- Do you know whether or not the surveyor had any notes by which to go or whether this was a new survey made by stakes placed on the ground by Sam Thompson?

Ans. It was a new survey made from stakes placed by S. J. Thompson.

Q. 55- Do you know when these stakes were placed on the ground?

Ans. I do not.

Q. 56- Did Sam Thompson ever make application to you for an assignment of this ground or any part thereof?

Ans. No, I can't say that he did, because he considered he had already made that to the other inspector, he only asked me for a new survey.

Q. 57- Do you know whether Sam Thompson ever had a survey of this ground beyond the 3 acres?

Ans. I do not.

Q. 58- Do you know whether he has a plat for more than the 3 acres?
Ans. Not to my knowledge.

Q. 59- Do you know whether Sam Thompson ever posted notices of the application for the assignment of this ground?
Ans. I do not. I suppose he applied to the other inspector, but I do not know in what manner he applied.
Q. 60- Is is customary for applicants to post such notices?
Ans. I have never been in the habit of requiring it.

Q. 61- You did state in your examination in chief that Sam Thompson requested you to have his ground resurveyed, in order that the 2 tracts may be thrown into one. State how far in this proceeding you had gone when you were stopped by the injunction of the court?
Ans. I had had it surveyed, and I think on the very day I was stopped by the injunction, I had finished.
Q. 62- Then you had not made an assignment of the ground to Sam Thompson up to this time?
Ans. No.
Q. 63- Would you have assigned it to him if you had not been stopped by the injunction?
Ans. I would.
Q. 64- How many acres would you have assigned?
Ans. 8 62/100, the amount thesurvey calls for.
Q. 65- Please state why you would have made assignment of this ground to Sam Thompson when you already considered him a legal occupant?
Ans. Well, I only considered this a resurvey at his request.
Q. 66- As I understand your testimony, you assigned this ground to Sam Thompson or would have assigned it to him in preference to Tom Thompson simply because in your opinion, Sam Thompson had the better right to it. Is this true?
Ans. According to my judgment, he did have the better right.
Q. 67- Did you consider Sam Thompson a rentor of this ground?
Ans. I did.

Q. 68- Was it because you considered him a rentor that you concluded he had a better right to it?

Ans. Yes.

Q. 69- Then if he were not a rentor you would consider that Tom Thompson had a better right to it, would you not?

Ans. Yes.

And further this deponent saith not.

Signature waived by consent.

C. C. Thompson being duly sworn, deposes and says as follows;

Q. 1- State your name, age, residence, occupation and whether you know the parties to this suit?

Ans. C. C. Thompson, 46 years, Nansemond County, Virginia, farmer and oysterman, and I know both the parties to this suit.

Q. 2- Are you in any manner related to either of the parties?

Ans. Both the plaintiff and the defendant are my brothers.

Q. 3- What is your feeling towards them?

Ans. I have good feeling for both of them. I would do anything for either of them that lies in my power.

Q. 4- Have you ever helped either or both of them heretofore?

Ans. I have helped both of them.

Q. 5- How about the future?

Ans. I would help either one of them just the same if it lay in my power.

Q. 6- How long have you been engaged in the oyster planting business?

Ans. About 30 years.

Q. 7- Are you familiar with the oyster planting grounds in Nansemond River?

Ans. I am. I have been operating in Nansemond River all my life.

Q. 8- Are you familiar with the location of the oyster grounds in dispute between Tom Thompson and Sam Thompson in this controversy, which are situated in New Channel?

Ans. Yes, I am.

Q. 9- Can you say or will you state whether the grounds in dispute are occupied by any one as an oyster planting ground?
(both question and answer objected to by counsel for plaintiff as being leading)

Ans. They are occupied at present by Sam Thompson.

Q. 10- Do you know how many surveys Sam Thompson has had made of the said ground or any part thereof?

Ans. He has had 2 made.

Q. 11- When was the first survey made?

Ans. He had his first survey made when I had my survey made, the same day, and that was about 8 or 9 years ago.

Q. 12- How many acres did he have surveyed at that time?

Ans. I do not remember.

Q. 13- When did he have the second survey made?

Ans. It was about 4 or 5 years ago, as near as I can recollect.

Q. 14- Do you know who made the second survey?

Ans. Prof. P. St. J. Wilson.

Q. 15- Do you know how many acres he surveyed at that time for Sam Thompson?

Ans. I do not know.

Q. 16- Do you know anything of a survey which is said to have been made or caused to have been made recently by Reps Williamson of this ground?

Ans. No, I was not there, I do not know anything of that.

Q. 17- Can you tell us how long Sam Thompson has been engaged in the oyster planting business?

Ans. For the last 15 or 20 years.

Q. 18- Can you tell us where his present oyster grounds are located?

Ans. In New Channel, in front of my farm and adjoining my oyster grounds.

Q. 19- Do you know whether or not that is the land that is now in dispute in this cause?

Ans. A part of it is.

Q. 20- Who has oysters planted on that ground?

Ans. Sam Thompson has them planted on there.

Q. 21- How long has he been planting them there and occupying that ground?

Ans. For the last 3 or 4 years, so far as I can recollect; ever since Mr. Wilson surveyed it.

Q. 22- Do you know and will you state how many acres he is now occupying in New Channel?

Ans. 8 acres is what he claims.

Q. 23- Do you know whether this ground is staked off or not, or otherwise designated by him? (Question objected to by counsel for plaintiff as being leading)

Ans. Yes, it is staked off.

Q. 24- Who had it staked off?

Ans. Sam Thompson staked it off himself.

Q. 25- How long has he had it staked off?

Ans. He has kept it staked off ever since he had it surveyed.

Q. 26- What is the method of cultivating oyster grounds which oystermen rent from the State?

Ans. Well, he plants shells and small oysters and oysters and shells together when he can get them.

Q. 27- How long does it take for shells when thus planted to become of any use and benefit to the planter?

Ans. If you plant them in the fall and have a strike on them this winter you can handle them in 2 years, ordinarily.

Q. 28- If a party were to rent a certain tract of oyster ground for one year and go immediately to work to plant it in oysters and shells and had to give the said ground up for the succeeding year, what would be the result?

Ans. He would get nothing if he planted shells, because he would get no strike on them to amount to anything. The only thing he could do if he had a strike on them would be to tong those shells up and move them to some other place.

Q. 29- Would a party make or lose if he were compelled to shift his oyster ground each year. (The last 3 preceeding questions

including this question and their respective answers are objected to by counsel for plaintiff as being leading, irrelevant and without any foundation to connect them with this case)

Ans. He could not rent ground that way, he had better quit the business and have no ground.

Q. 30- Do you know whether or not Tom Thompson, when he applied for an assignment of this ground, knew that it was occupied by Sam Thompson?

Ans. He knew that Sam Thompson had stakes on that particular ground.

Cross Examined by Counsel for Plaintiff.

Q. 1- Capt. Thompson, I believe you are appearing here in the interest of the defendant to this suit, are you not?

Ans. I come to aid him, and do what I could to help him, if I can.

Q. 2- To whom have you been talking regarding the facts in this case?

Ans. No one at all that I know of.

Q. 3- Please state the state of feelings now existing between the plaintiff and the defendant to this case.

Ans. I don't know, I could not state it.

Q. 4- With which of your 2 brothers have you been most intimate?

Ans. There has been no difference.

Q. 5- Have you not been talking about this matter with Sam Thompson?

Ans. I have not said any more to him than I have to Tom Thompson.

Q. 6- When were you last on the grounds now in dispute in this case?

Ans. I was out there last Saturday, fishing a net.

Q. 7- About how often in the last 2 months have you seen this ground?

Ans. Every day except Sundays.

Q. 8- Did you notice any change in the position of the stakes in and

around this ground in the last 2 months?

Ans. There have been 2 sets of new stakes planted on this ground. After the ice of last winter had carried the old stakes off or cut them off, Sam Thompson put up a new lot of stakes, and since that time Tom Thompson has also put some stakes on the old ground.

Q. 9- When were these stakes, which you mentioned as having been put in the ground by Sam Thompson, placed?

Ans. About 2 or 3 months ago.

Q. 10- Do you know whether the position of these stakes has been changed since they were first placed there?

Ans. Not that I know of.

Q. 11- Do you know the location of the 3-acre lot of ground owned by Sam Thompson?

Ans. I know one end of it, but do not know its lines.

Q. 12- Have you ever seen Sam Thompson plant any stakes on this ground, or did he simply tell you that he had?

Ans. I have seen him staking off the ground.

Q. 13- When was this?

Ans. It has been about 2 months.

Q. 14- Do you know when the 5-acre lot of land was assigned Sam Thompson?

Ans. I don't know when it was assigned, but he has had it some 4 or 5 years.

Q. 15- State whether or not Sam Thompson ever received a plat for this 5-acre lot of land?

Ans. I don't know.

Q. 16- Have you ever seen Sam Thompson planting oysters on the 5 acre piece of this ground? (Witness is here put upon his guard as to his answer)

Ans. I have seen him planting oysters or shells one on it. This

was last year and year before last.

Q. 17- Have you ever seen him taking up oysters from the ground?

Ans. He took up some there last fall.

Q. 18- Are there any oysters left there?

Ans. I don't know.

Q. 19- As an expert witness, would you not say that if oysters had been planted on this ground last year and some removed last fall that there would remain a large proportion of theplanted oysters still on the ground?

Ans. Yes, by handling them over and taking up the largest ones and throwing the little ones back.

Q. 20- Is it not the custom to do as you have above indicated?

Ans. Yes.

Q. 21- Is it not customary that when oyster planting ground has been assigned to have a plat made and recorded in the clerk's office

Ans. Yes, that is the custom. The inspector puts it in the clerk's office.

Q. 22- Were there any stakes on this ground in February, 1900?

Ans. Yes, there were stakes on it.

Q. 23- Please state about the number?

Ans. I could not do that. I could not tell the number.

Q. 24- Are you prepared to say that these stakes were not stakes known as shad stakes? (Witness is here put on his guard as to his answer)

Ans. They were the same as I stake my oyster ground off with.

Q. 25- Did these stakes designate the 3 acre tract only, or did they include the whole 8 acres?

Ans. I reckon they must have included all of it, as they commenced at the upper part of the ground and came down to my line.

Q. 26- Do you know why Sam Thompson had this ground resurveyed this spring?

Ans. I don't know, except what he has told me. He told me that he wanted to get it all into one piece.

Q. 27- Do you know whether Sam Thompson has paid rent on this ground, if so, how much, and for what years?

Ans. I can't answer that.

And further this deponent saith not.

S. J. Thompson being duly sworn, deposes and says as follows;

Q. 1- State your name, age, residence, occupation and if you know the parties to this suit?

Ans. S. J. Thompson, 48 years, Nansemond County, oysterman and fisherman. I know the parties to this suit. I am one of the defendants.

Q. 2- How long have you been engaged in the business of planting oysters?

Ans. 16 years.

Q. 3- Where have you been operating during this time?

Ans. In New Channel in Nansemond River.

Q. 4- Will you state whether or not you are familiar with the grounds in New Channel?

Ans. I am.

Q. 5- How many acres of land did you first have surveyed and assigned to you?

Ans. 3 acres.

Q. 6- About when was this assigned to you?

Ans. I think it was in 1883.

Q. 7- When did you have another survey made?

Ans. In 1896.

Q. 8- Who made this second survey?

Ans. Prof. P. St. J. Wilson.

Q. 9- Have you his bill, charging you with making this second survey?

Ans. I have, and I herewith file the same, marked Exhibit "B".

Q. 10- How many acres were laid off for you in this second survey?

Ans. 5 acres.

Q. 11- Did you have a plat of the first survey of 3 acres, and was it recorded in the Clerk's Office?

Ans. I never had it recorded, but the inspector told me it was recorded in the Clerk' Office.

Q. 12- Did you ever have a plat furnished you by St. Julian Wilson for this second survey of 5 acres?

Ans. No, I never had any plat of it. The inspector told me it was recorded when he gave me my tax receipts.

Q. 13- I notice that this bill of Prof. Wilson's for $2.50 is credited with $1.50. Can you state whether he ever received the remainder of his pay or not?

Ans. The inspector told me that he paid it all up when he gave me the tax receipt. I paid it to the inspector, I mean Mr. John W. Ames.

Q. 14- What is the location of these 5 acres of ground in regard to the 3 acres?

Ans. The 5 acres lay above and adjoining the 3 acres and now form one piece.

Q. 15- When did you take possession of this 5 acre tract?

Ans. In 1895.

Q. 16- Who has occupied it since that time?

Ans. I have.

Q. 17- How and in what manner have you occupied it since 1895?

Ans. I have kept it staked off, planted shalls and oysters on it.

Q. 18- Are those stakes that are usually set up in Nansemond by oyster planters visible to other oyster planters or other persons interested in the cultivation of oyster grounds?

Ans. They are.

Q. 19- When did you last stake off this oyster ground?

Ans. In February, 1900. I stake up my oyster ground in Feb. after the ice has destroyed a portion of it every year.

Q. 20- Where did you plant the stakes in Feb. last?

Ans. Right along by the side of the old stakes.

Q. 21- Then did you take in the same old ground of 8 acres or thereabouts?

Ans. The same old ground.

Q. 22- When did you have the last survey made of this oyster ground now occupied by you?

Ans. The last of March or first of April, 1900.

Q. 23- Who made this survey?

Ans. The surveyor, Mr. B. P. Baker made the survey. I asked the inspector, Reps Williamson to have the survey made.

Q. 24- Explain why you wanted a new survey?

Ans. To get both of these pieces of ground into one. I mean the 3 acre and the 5 acre tracts.

Q. 25- Will you state whether or not the former inspector had ever furnished you with a plat of the survey of the 5 acres?

Ans. No, he had not.

Q. 26- Why was it that he did not furnish you with a plat?

Ans. I did not know that the plat for the 5 acres was not recorded in the Clerk's Office until Reps Williamson told me it was not; then I asked him to have the whole thing surveyed.

Q. 27- Has Tom Thompson ever occupied any part of this 8 acre tract for planting oysters?

Ans. 3/4 of an acre 12 years ago. I let him have this off my place,

and he sold it to N. S. Buck.

Q. 28- Has he occupied any part of it since then?

Ans. He has not.

Q. 29- Have you, and will you file as evidence in this case, any receipt for the last rent which you paid to the former inspector J. W. Ames?

Ans. I have, and herewith file a receipt which is marked exhibit "C" showing that I paid $5.00 for the rent of the 5 acre tract for the year ending the first day of Sept., 1898.

Q. 30- Have you since that time paid the present inspector any rent for the year beginning first of Sept. '98 and if so, will you file the same?

Ans. I have, and I herewith file the receipt which is marked exhibit "D". The receipt given me by Williamson covers the year 1898-99: the receipt given me by Ames covers the year 97-98. All back rents have been paid, I could not have gotten a receipt for these years unless all back years had been paid.

Q. 31- Will you state whether you have paid the rent for the year commencing September, '99 and ending this coming Sept. and if not, why not?

Ans. I have not paid it. The inspector gave me until the spring to pay it. I have offered him the money, $5.00 according to my promise and he refused to take it.

Q. 32- What is the rent per acre of oyster ground?

Ans. $1.00 per year.

Q. 33- Explain why you pay $5.00 or offer to pay $5.00 when you claim 8 acres of land?

Ans. When my receipt for '98 come to me the 3 acres were not included. I went to the inspector to survey me the 2 pieces of ground. I explained to him that the 3 acres were not in it and he said he would as soon as he could (this was Mr. Williamson).

Q. 34- Why was it that you only paid Mr. Ames $5.00?

Ans. I paid exactly what his bill called for and when I came to notice it the 3 acres were short. I sent Mr. Ames, who lived in Norfolk at that time, $5.00 and he sent me a receipt for the $5.00 for the 5 acres, and I noticed that the 3 acres were short. He had then retired and I soon afterwards spoke to Mr. Williamson about this shortage and asked for a new survey. I herewith file a receipt from Ames for the 3 acre land for the year ending the first day of Sept., 94. I have paid up to '97 but have lost that receipt. This appied to the 3 acre lot.

Q. 35- How long have you been continuously occupying the 8 acres?

Ans. For 5 years.

Q. 36- Has any-body ever disputed or set up any right to this tract or any part thereof before the commencement of this suit?

Ans. No one at all.

Q. 37- Have you kept it all staked off?

Ans. Yes, I have.

Q. 38- Can you state what is on this 8 acre tract now?

Ans. I have about 700 or 800 bushels of shells on this ground now, to the best of my judgment.

Q. 39- When did you put them there?

Ans. I have been putting them there from year to year; shells for the last 2 years anyway.

Q. 40- Has ~~Sam~~ Tom Thompson ever said anything to you about this ground?

Ans. Yes. He sent me word could n't he buy a piece of my ground. I told him no. It was last year.

Q. 41- What would be the result if the inspector were to refuse now to assign you this ground and conpell you to remove? (this question is objected to as a matter of law; he is given a certain time in which to take them off).

Ans. I would injure me seriously. It would take away all my living and support.

Q. 42- What is the custom of the oystermen in making application for grounds which are already occupied?

Ans. I do not know any custom. Once grounds are assigned, we hold them as long as we pay the rent.

Q. 43- Do you know whether Tom Thompson has any oyster grounds now assigned to him or not?

Ans. I do not know. He has none that I know of.

Q. 44- Do you know whether out-side of this 8 acre tract there are other unoccupied grounds in New Channel, which he may obtain?

Ans. There are if he wants them.

Q. 45- Could you say how many unoccupied grounds there are?

Ans. To the best of my judgment there are 20 acres in New Channel not occupied.

Q. 46- By proper attention and cultivation could these 20 acres or any part thereof be made available for oyster planting ground?

Ans. Every man has a different opinion of his ground, even to farming, what suits some men would not suit some others.

Q. 47- How far does this 20 acre tract lie from the 8 acres?

Ans. Just outside and adjoining it.

Cross Examined by Counsel for Plaintiff.

Q. 1- Please state what feelings exist between you and the plaintiff in this case?

Ans. Outside of this controversy, there are good feelings.

Q. 2- Referring to the 5 acre tract alone, when did you take this ground up?

Ans. In 1895.

Q. 3- To whom did you apply for an assignment of this ground, I mean the 5 acres?

Ans. To the inspector. He told me if I did n't take this ground or if I did n't want it, somebody else would take it or want it.

I was a little short and I took it.

Q. 4- Please state how you made application and what you did at this time in order to perfect the legality of the application?

Ans. By the inspector standing on the shore and seeing me place my stakes and then coming ashore and having it surveyed. This was inspector J. W. AMes.

Q. 5- How long was it between the date you first applied to the inspector for the ground and the date it was surveyed?

Ans. It was about 2 months.

Q. 6- Did you post notices of this application at the front door of the court house and 2 more prominent places near this ground?

Ans. No, I did not.

Q. 7- Who surveyed this 5 acre ground?

Ans. Mr. Wilson.

Q. 8- Did you pay the surveyor his fee?

Ans. I paid him $1.50 of it as shown by the receipt filed and marked exhibit "B". The inspector paid the balance.

Q. 9- How do you know he did?

Ans. He told me so.

Q. 10- You stated that you paid the inspector the balance of the surveyor's fee, have you a receipt for the same?

Ans. No.

Q. 11- Why did you not take a recipt for this?

Ans. I just did not ask for a receipt.

Q. 12- You say this ground has been occupied by you (this 5 acres) since '95, please state when rent for this ground was paid for the year '95-96?

Ans. I do not know.

Q. 13- You state that you paid the taxes at the same time that you paid the balance due the surveyor, and the receipt of the surveyor shows that he received the first payment on his bill Sept. 1896, then the taxes for the year '95-96 must have been paid later than Sept. 14th, '96. Is this not true?

Ans. They were paid in '96.

Q. 14- By calculation based on your previous statements, you should have paid to the Common Wealth of Virginia $40 as rent for the 8 acres since September '95. Please state how much of this amount you have actually paid, giving the date as near as may be, to whom paid, and on what grounds?

Ans. I have paid it up to 1898-99. I paid Mr. Ames $24. I paid Mr. Williamson $5.00. I paid this amount on the 8 acres.

Q. 15- By your own statement then, you have only paid $29 as rent, and leaving you behind #11?

Ans. Yes.

Q. 16- Have you any receipts from Ames other than the one filed in this case?

Ans. I think I have, and will file them if I can find them.

Q. 17- The receipt filed in this case from Ames shows that you paid only $5.00 on these 8 acres for the year ending Sept. '98. To whom did you pay the $3.00 due that year?

Ans. I have never paid this amount for that year.

Q. 18- You state that you paid Reps Williamson $5.00 for rent for the 8 acres of ground for the year '98-99. Have you ever paid the remaining $3.00 for that year?

Ans. No, he told me to wait until he had had it surveyed.

Q. 19- Do you know whether he applied the $5.00 paid by you to the 5 acre tract or to the 3 acre tract?

Ans. I do not.

Q. 20- Why might he not have applied it to the 3 acre tract in extinguishment of the rent on the same for the years '97-98-99?

Ans. He told me that I owed him on 5 acres of oyster ground. I explained to him that I had 8 acres staked off and I wanted it surveyed to get the 2 pieces into one.He says I will as soon as I can.

Q. 21- When you paid Williamson this $5.00 you also informed him that you held 8 acres instead of 5 and that you still owed $3.00 on the 3 acres for the preceeding years?

Ans. That is right.

Q. 22- Then this $5.00 paid to Williamson should have been applied to the 3 acres as they were longest due?

Ans. No, they were properly applied to the 5 acres.

Q. 23- How do you know it was applied to the 5 acres?

Ans. Because the receipt showed it.

Q. 24- Since the payment of this $5.00, you have paid nothing to Williamson?

Ans. I have not, but I have offered the money to him and he refused to take it.

Q. 25- When did you make this offer?

Ans. It was about the first of April.

Q. 26- That was after this controversy began, was it not?

Ans. Yes.

Q. 27- As I understand your testimony, you still owe $3.00 on this ground to J. W. Ames for the year '97-98; $3.00 to Reps William son for the year '98-99 and $8.00 to Reps Williamson for the year 99-1900. Is this not true?

Ans. Yes. He refused to take the money for this year in April.

Q. 28- When the 5 acre tract of land was surveyed to you in '96, did there not exist a small tract of land owned by N. S. Buck between your 3 acre and 5 acre lot?

Ans. 3/4 of an acre.

Q. 29- Did you not state in your examination in chief that by the survey made by Baker here last March that your 2 tracts were put into one. Explain what have become of Mr. Buck's rights in the 3/4 of an acre?

Ans. Mr. Williamson inspector, told me that this piece of ground of 3/4 of an acre was thrown out, so then I surveyed straight through.

Q. 30- Why was it thrown out?

Ans. He said he had not received any taxes on it.

Q. 31- Had he received all of your taxes?

Ans. No, he had not.

Q. 32- Then would not a third person have as good a claim to your land as you had to Buck's, if not, why?

Ans. The inspector objects to any one taking my ground and gave me a right to take Buck's; because it was not occupied, and because Buck had not applied for it.

Q. 33- You state in your examination in chief, there are other grounds in New Channel which remain unassigned and unoccupied which might be taken up by the plaintiff, if he so desired, are these grounds as good as the ones occupied by you, and would you be willing to swap for them?

Ans. I would not. I would not want to put 16 years labor on one part of it to cultivate it, or 5 years to that that has not been cultivated.

Q. 34- Did you have the same opportunity to take this unoccupied ground as you had to take the ground now occupied by you?

Ans. Yes if I had wanted it.

Q. 35- You preferred the 3 acres you have now because it was better ground and more suitable for the production of oysters? Is this not true?

Ans. Yes.

Q. 36- How many bushels of oysters have you planted on this 5 acres of ground?

Ans. About 200 or 300 bushels of oysters and shells.

Q. 37- When were they planted?

Ans. Some were planted in the fall of '96-97-98.

Q. 38- How many oysters have you on there now?

Ans. I should suppose 300 or 400 bushels.

Q. 39- Have you not changed the position of the stakes marking the

lines of this 8 acre tract of land?

Ans. No.

Q. 40- How then could you take in the Buck tract unless you altered the stakes?

Ans. I had 8 acres in the first place, now it is 8 62/100 acres. This could be done without altering the stakes.

Q. 41- When the surveyor, Baker, put these 2 tracts into one in March last, did he make a new and original survey, or did he follow previously made notes?

Ans. He made a new survey.

Q. 42- Was not this survey made according to your directions and took in the land that you pointed out to the surveyor?

Ans. I pointed out the land to the inspector. The inspector pointed it out to the surveyor.

Q. 43- In other words, you pointed to your stakes and asked the inspector to survey and assign you this ground. Is this not true?

Ans. Yes.

Q. 44- Did you ever pay the surveyor his fee for making the survey of the 8 acre tract in 1900?

Ans. No, the plat had not been delivered to me; I was to have paid when the plat was delivered to me. I am ready to pay it as soon as the plat is delivered to me.

Q. 45- When did you know that Tom Thompson had made application for this ground?

Ans. I heard of it the day after he came and stuck the stakes on my ground. It might have been before this, I cannot remember positively. (witness is here put on his guard as to his answer)

Q. 46- Then you first heard of it the day you went to Williamson and carried the Ames receipt?

Ans. Then I heard that he wanted the unoccupied ground in New Chan-

nel. I go to Mr. Williamson and show him my receipts and how my land lies.

Q. 47- Was not this controversy brought about by the fact that Tom Thompson stuck a fishing net or weir on your 5 acre ground, thinking it unoccupied and by your either removing it ot ordering him to take it off?

Ans. What his thoughts were, I don't know, but I have never said a word to the man in 12 months. I never disturbed his weir at all.

Re-examined.

Q. 1- You have stated in your cross examination that you paid Mr. Ames all he demanded of you and called his attention to the fact that the 3 acres were short and that you desired a new survey so as to include the 3 acres and the 5 acres in one piece, are you now willing and anxious to pay all that you owe to the Common-wealth of Virginia for this 8 acre tract? (Question and answer both objected to for the reason that witness did not make such statement which constitutes the premise of this question, but instead said in effect that he observed the deficiency himself and had no opportunity of seeing in person Ames, also the question is leading).

Ans. Yes. I got after Mr. Williamson last year to have this piece of gound surveyed and he put me off and promised me he would do so as soon as he could, as soon as he could the surveyor to come down here, and he did not get him down here until last year.

And further this deponent saith not. Signature waived by consent.

Mr. S. A. Oliver, being duly sworn, deposes and says as follows;

Q. 1- State your name, age, residence and occupation and if you know the parties to this suit.

Ans. S. A. Oliver, 53 years old, Nansemond County, Va. farmer, and I know all the parties to this suit.

Q. 2- Have you ever been on the oyster grounds situated in New Channel in Nansemond River, supposed to contain about 8 acres, which are now claimed by S. J. Thompson, and which are the grounds in dispute in this case?

Ans. Yes, I was on the 5 acres of ground yesterday. I went down there with Mr. Geo. E. Bunting.

Q. 3- Will you state whether you made any examination for the purpose of discovering whether there were any oysters, large or small and any shells on this ground, and if so, what was the result of your examination?

Ans. We were there yesterday and took a boat with two men with tongs we went over the ground that was shown to us to be the ground, I suppose it was it. We sounded all over it with oyster tongs and found some oysters. On the portion of this 5 acres in a piece which probably was about 300 or 350 yards long and about 40 or 50 yards wide, we found most of the oysters, more or less we took up about 4 bushels at different places of shells and oysters, which when culled would run fully 1/3 of salable oysters. I should think to the best of my judgment, there would be at least 100 bushels of good salable oysters on this 5 acre tract. I should think from the least calculation there would be between 300 and 500 bushels of small oysters and shells on the same ground.

Q. 4- Was this ground staked in?

Ans. Yes, I suppose it was, I saw there were stakes around it; there were corner stakes and I saw at least 2 old stakes; stakes that might have been stuck last spring and which had been cut off below high water mark by ice, I suppose.

Cross Examined by Counsel for Plaintiff.

Q. 1- You state you are a farmer, have you ever followed oystering as a business?

Ans. No, I never have.

Q..2- Then any estimate which you place upon the number of bushels of oysters beneath the surface of the water is not formed upon a bases of previous experience in this trade, but is more or less pure guess work, based upon the relative amount of oysters caught to the number of acres covered, is this not a fact?

Ans. Yes.

Q. 3- Is it not a fact that an inexperienced man sounding for oysters, if he finds a patch here and there, would be likely to conclude that oysters covered more or less of the whole ground?

Ans. No.

Q. 4- Have your ever caught oysters in your life?

Ans. I have.

Q. 5- In catching oysters on planted ground, about what is a fair catch per hour?

Ans. On fairly planted ground, I should think about 5 bushels per hour.

Q. 6- How many hours was your party tonging yesterday on the grounds here in dispute?

Ans. We were on the ground about one and one half hours.

Q. 7- How many tongers were in the boat?

Ans. There were 2 tongers.

Q. 8- Were these tongers experienced men?

Ans. Yes, I suppose so; one of them was I know, and I think the other one was also.

Q. 9- About what proportion of soundings struck oysters?

Ans. On one side of this ground there are oysters more or less all the way along; at some places you could grab up a bushel at the time if your tongs would hold them and at other places you would get only one or two.

Q. 10- Did you have hold of these tongs?

Ans. I did a part of the time.

Q. 11- Could you state about what proportion of the time you held them?

Ans. About 10 minutes.

Q. 12- What was the largest amount of oysters that you caught?

Ans. I don't know the exact amount, because I did n't count them.

Q. 13- How then do you know that the oysters were so thick,and that a bushel at a time might be cought?

Ans. I judge from the other men that were tonging. They tonged the tongs up full sometimes.

Q. 14- Are you sufficiently familiar with oyster culture to know a plant oyster from a natural strike?

Ans. Yes.

Q. 15- Did the most of these oysters which you caught,appear to be old or new?

Ans. I should judge the salable ones to be about 3 years old.

Q. 16- If shells and oysters had been left on this ground for 5 years, could not the natural strike have produced these oysters which you caught?

Ans. No.

Q. 17- Why?

Ans. Because there were James River oysters there, and they never would have struck there after striking in James River.

Q. 18- Can you tell a James River oyster from a Nansemond Ridge oyster?

Ans. I can.

Q. 19- As I understand your testimony then, you believe that the oysters you found on this ground were planted on it within the last 2 years?

Ans. No, I don't think that. I don't think that they had been planted under 3 years.

Q. 20- Might they not have been planted there over 5 years ago?

Ans. Some of them might have been, yes.

Q/ 21- And if there had been any planted 5 years ago, would not others

have multiplied there?

Ans. It depends upon the strike up the river. They would have been bound to have multipied if there had been a strike.

Re-examined.

Q. 1- At whose request did you go down yesterday?

Ans. At the request of Mr. Sam Thompson. Both Mr. Sam Thompson and Mr. Tom Thompson went with me and showed us the grounds, then both left.

And further this deponent saith not.

Mr. Geo. E. Bunting being duly sworn, deposes and says as follows;

Q. 1- What is your name, age, residence, occupation and do you know the parties to this suit?

Ans. Geo. E. Bunting, 28 years old, Nansemond County, farmer,and I know both the parties to this suit.

Q. 2- When were you on the oyster grounds in dispute?

Ans. Yesterday.

Q. 3- Did you make an examination of the ground to discover if possible the number of oysters and shells on the same?

Ans. I was in the boat with Mr. S. A. Oliver, who has just testified and with the 2 tongsmen, Mr. John Harrison and Mr. Edd Dowdy. I did not handle the tongs myself, but heard the soundings from the bottom and also saw them pull up the oysters.

Q. 4- Can you give an estimate of how many bushels of salable oysters there are on this 5 acre tract?

Ans. Some where in the neighborhood of 100 bushels, more or less.

Q. 5- How many small oysters and shells on the same tract?

Ans. I should say between 350 and 450 bushels, may-be 500, that includes salable oysters and shells also.

Q. 6- Will you state whether you went over the greater part of this ground or not?

Ans. I think we did most of it. We rowed up and down the ground 2 or 3 times and sounded all along.

Q. 7- Will you state whether you saw any stakes on this ground or not?

Ans. There were 4 stakes that were shown to us as the boundary stakes or corners.

Q. 8- Did you notice any old stakes?

Ans. I noticed some old stakes that had been cut off, I don't know whether they were old oyster stakes or fyke stakes.

Q. 8- At whose request did you make this examination?

Ans. At therequest of both parties. Capt. Tom Thompson came to me first and asked me if I would go on the grounds for the purpose of making this estimate and probably within a hour Capt. Sam Thompson made a similar request of me.

Cross Examined.

Q. 1- Have you ever oystered?

Ans. I can't say that I have.

Q. 2- Is it not a very difficult matter to estimate the quantity of oysters under water, separateing oysters from the shells in your minds eye, and not take all of them up?

Ans. It is difficult, but we can make estimate.

Q. 3- In making these estimates as above indicated, is it not more natural to over-estimate than to under-estimate the quantity of salable oysters, for the reason that when the tongs strike anything hard that one naturally concludes it to be oysters and rarely allowsany other suggestion to enter into their estimate?

Ans. If you are making soundings and not taking up any oysters, this

might be true, but if you were taking up oysters occasionally, you would come pretty near to it. You could then tell whether you were striking oysters or any other hard substance.

Q. 4- As I understand your testimony, there were only about 4 bushels of oysters and shells taken up?

Ans. Somewhere about that many.

Q. 5- If the estimate of oysters and shells on the ground run as high as 500 bushels, is not the amount taken up a small proportion of the whole?

Ans. Yes.

Q. 6- Then most of this estimate must have been based solely upon soundings, is this not a fact?

Ans. Yes, from soundings and from what we saw.

Q. 7- About how many oysters are usually contained in an acre of ordinarily planted ground?

Ans. I have no idea.

Q. 8- Can you distinguish a plant oyster from a natural strike?

Ans. I cannot.

Q. 9- Is it not a natural result that where oysters have been planted say 5 years ago, that they would accumulate by natural growth?

Ans. Of course they would both accumulate and grow from natural strike.

Q. 10- Could you form any idea as to how many oysters and shells it would require to produce by natural growth and natural strike to make the 100 bushels of supposed oysters here within 5 years?

Ans. I cannot answer this question. (~~This man only knows an oyster when well roasted~~)

Q. 11- Have you ever seen Sam Thompson plant any oysters on this ground?

Ans. No.

Q. 12- Did you ever see Stephen Saunders plant any there?

Ans. I have seen Stephen Saunders plant oysters in New Channel about this ground, but I don't know whether it was on this ground or not, but it was on the same side of the Channel. It has been quite a while ago.

Q. 13- If Saunders had left any oysters and shells on this ground 5 years ago or more, could not the natural strike have produced just the condition which you found exactly on this ground?

Ans. If oysters and shells had been left there, it would have produced this result, but I do not know whether he left any there or not. It is impossible for a man to plant oysters and take them entirely up from the ground, some would be left.

Q. 14- In regard to the stakes, were not the old stakes you saw above, the boundary lines to this ground?

Ans. I saw a couple of old stakes between the upper and lower corner of the boundary lines on the inshore side. I don't know whether they were oyster or shad stakes.

Q. 15- Did you not see shad stakes inside the boundary lines of this ground?

Ans. I did.

Q. 16- Could the stakes you above refer to have been used for the same purpose as these shad stakes?

Ans. I don't know.

Q. 17- Did the shad stakes you saw up here appear to be old?

Ans. The shad stakes that I knew to be shad stakes were not over a year old.

Q. 18- If ice had cut down a whole set or row of oyster stakes on this ground last winter, is it not probable that it would also have cut down these shad stakes inside the ground and the fyke stakes out-side the ground, or some of them?

Ans. Not necessarily so, because the fyke stakes and shad stakes are larger and will stand more pressure.

Q. 19- Did not these tongers who were in the boat with you yesterday take up oysters about as frequestly as circumstances permitted?

Ans. At times they did, and at times they did n't.
And further this deponent saith not.

Thomas J. Thompson

vs

Reps Williamson Oyster Inspector and S. J. Thompson.

This cause came on this day to be heard on the bill of the petitioner, the answers of Reps Willaimson, Oyster Inspector, and S. J. Thompson, the exhibits filed, and the depositions of Reps William son and others, and was argued by counsel.

On consideration whereof, the court being of opinion that the injunction heretofore granted in this case should be dissolved, doth order adjudge and decree that the same be, and the same is herby wholly and entirely dissolved; and it appearing that nothing further remains to be done in this cause it is ordered that the same be dismissed from the docket ~~at~~ and that the defendants recover of the petitioner their costs in this case .

Entered April 30, 1900

Robert Lewis

Entered in Chancery
Order Book No 3
Page 292.

The answer of T. J. Thompson to a bill in chancery exhibited against him and another in the Circuit Court of Nansemond county by T. J. Thompson .

This defendat now and at all times hereafter reserving and saving unto himself all benefit and advantage of exception that can or may be had or taken to the many errors uncertainties and other imperfections in the said complainants said complaint contined for answere to said bill answers and says ;

That so far as the said ten acres of oyster grounds mentioned in the bill are concerned he knows nothing of but eight acres of them but he says that he has been in possession of eight acres of the said land or ground for many years as renter from the inspector; that he has had and held possession of three acres thereof and paid the state taxes or rent tereon for sixteen consecutive years past; that he has had possession of five acres part thereof and paid such rent or taxes tereon for thepast five years; that it is not true that he has only staked in the said ground during themonth of March I900 but on the contrary he has had said ground laid off designated and staked in for several years past and has continually occupied it as a renter from the oyster inspector of Nansemond county; that he has continually during that time planted oysters thereand put oyster shells there for the propogation of oysters; that he has thus been in possession of said grounds as a rentor for several years and has continually occupied the same and has been a continual applicant for the said grounds from year to year and has rented the same from year to year and has paid his rent therefore; that he is now in possession of the said eight acres ; thatheholds a receipt from the late oyster inspector John W. Ames sr for siad ground for theyear beginning September I897 and ending September I898; that he holds the receipt from the present oyster inspector for the grounds from September I898 to September I899; and that he has offered to pay the rent to the said present inspector for the current year ending Septembet I900 but that the said inspector told him he could havmore time in which to pay it; that a part of the said grounds has already been surveyed and theplat recored in the clerks office of said county court and that the other part was surveyed for him by deputy county surveyor St. Julian Wilson and he has paid for said survey and why said survey has never been recorded this defendant does not know.

That sometime ago he asked the present oyster inspector to have the entire eight acres of said ground laid off, and surveyed, and told him exactly how matters stood, and that the inspector promised him he would have the work done just as soon as he could command the services of a surveyor to do it. This defendant says that he is justly entitled to the rental or assignment of said eight acres of said grounds and that it would work great injustice to him to compel h-im to leave said grounds and to now assign them to another; that it would do him irreparable ~~dm~~ damage and injury. He ~~three~~ therefore prays that the injunction in this cause may be speedily dissolved, and ~~th~~ the said Reps Willaimson present oyster inspector for this said county may be allowed and permitted to protect the rights of this defendant, and re-survey and to assign him said ground according to the law ; that he has never refused to pay his rent or tax for the ground; that he has always paid all that was demanded of him, and is now ready, willing, and anxious, to pay anything that may be legally demanded of him. And having fully answered he prays to be hence dismissed with his reasonable costs in this behalf expended and he will ever pray & .

S. J. Thompson

Virginia ; Nansemond county to-wit ;

I, R. H. Rawles a notary public for the county aforesaid in the State of Vriginia do certify that S. J. Thomp-son whose ma name is signed to the above answer has this day made oath before me in the county afresaid, that the statements contained in the said answer are true, to the best of his knowledge information and belief. Given under my hand this 6th day of Arpil 1900.

R. H. Rawles N.P.

Answer of
S. J. Hudson

The answer of Reps Willaimson to a bill in chancery exhibited against him and another, in the circuit court of Nansemond county, by T. J. Thompson .

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of ~~compalint~~ complaint contained for answer thereto, answers and says ;

It is true he is oyster inspector of Nansemond county . It may be true that some time in February 1900 the complainant spoke to him concerning certain oyster grounds in Nansemond river, and asked that they be assigned to him, but this defendant denies that he undertook or promised to lay off, designate or assign said grounds to the complainant ; he further denies that he declared that said grounds ~~that said grounds~~ did not constitute a natural oyster rock or bed within the meaning of the statute, and he expressly denies that he told the complainant that said grounds were not occupied by, or assigned to any other person .

On the contrary your defendant expressly told the complainant that he would investigate the matter, examine the records, view the grounds, and determine whether said grounds did or not constitute natural oyster rock or bed ; whether they were such as he had a right to rent, or assign, and especially whether any other person had any rights thereto.

Your defendant further says that he did investigate the matter, and found that the said grounds, or the larger part thereof, were already occupied by S. J. Thompson a citizen of Nansemond county Virginia, whom had held them under asingnment for many years, and who had paid the rent for them. The said S. J Thompson exhibited to this defendant receipts from the former oyster inspector of this county for said grounds showing that he had been renting and holding them for a long time. The said S. J. Thompson is now in possession of said grounds, or a larger part thereof, and has paid this defendant rent for them; he paid this defendant rent for them for the year beginning September 1898 and ending September 1899 and he has ~~paid~~ to pay ~~a part of~~ the rent for the year beginning September I899 and ending September I900 and this defendant gave him time to pay the ~~remainder~~ of the said rent. This defendant therefore says that after said full investigation, finding the facts as above set forth he communicated said facts to said complainant and told him he could not assign the said

grounds to him, believing it to be his duty to treat all applicants fairly and alike. Your commissioner is informed and belives that the renting or assigning of ~~osy~~ oyster grounds is a matter largely within his judgment and discretion ; that he has endeavored to exercise sound judgment and discretion in this particular case, and has sought to execute his duties in such a manner as to protect the rights of all, and to infringe on the rights of no one. That it is his firm opinion that the said S. J. Thompson has the better right to ~~an usi assignment of~~ the said grounds and that it would be gross injustice to him, the said S. J. Thompson, to now assign them to another; that the said T. J. Thomson has no right in the matter that this defendant is aware of, and that he will in no wise be injured by an assignment of said grounds to the said S. J. Thompson. This defendant therefore prays that the injunction heretofore served on him in this case may be speedily dissolved, and that he may be left free to prosecute his work as oyster inspector of this county and to rent, let out, or assign, the oyster grounds in his jurisdiction in such manner as in his sound discretion and jdugment may be legal and proper, and just, andwise and right: that he may be permitted to re-survey ~~assign~~ said grounds herein mentioned for the said S. J. Thompson according to his rights in the premises, and to permit him to rent and hold them in the manner provided by law for such assignment. Your defendant further says he has given the bond required by statute for the faithful performance of his duties as such oyster inspector and that if any person, and especially if the said complainant has been injured or damaged by any of his acts as such inspector and has sustained any loss thereby then he has full, ample and complete remdey at law for the redress of such wrongs and for the recovery of any damages which he may be able to show that he has sustained. And having fully answered this defendant prays to be hence dismissed with his reasonable costs in this behalf expended and he will ever pray & .

R. H. Williamson

Virginia , Nansemond county to-wit ;

I, R. H. Rawles a notary public for the county aforesiad in the State of Virginia do certify that Reps Willaimson whose name id signed to the above answer has this day made oath before me in my said county that the statements contained in said answer are true to the best of his knowlegde and belief. Given under my hand this 9th day of April 1900.

R. H. Rawles N. P.

Answer of
Rip Williams
?

The answer of S. J. Thompson to a bill in chancery

IN THE CIRCUIT COURT OF NANSEMOND, NANSEMOND COUNTY TO-WIT:
IN VACATION. MARCH 28th. 1900.

T.J. Thompson ----------Petitioner.

vs. } Injunction

Reps Williamson, Oyster Inspector } ----------Defendants.
and S.J. Thompson,

To the Hon. R.F. Prentis, Judge.

Your petitioner, T.J. Thompson, shows to your Honor the following facts:

That Reps Williamson, of Nansemond County, is the regularly appointed Oyster Inspector for Nansemond County and that your petitioner is a resident of the County of Nansemond, State of Virginia.

On the --day of February, 1900 your petitioner made application to Reps Williamson, Oyster Inspector as aforesaid, to assign to him certain oyster-planting grounds in Nansemond River, containing about Ten (10) acres, and situated at a point known as "New Channel" in said river, off "Stockley Farm", and on the Northern edge of the channel of said river. At which time the said Reps Williamson, Inspector, stated and declared to your petitioner that the aforesaid oyster-planting grounds were not occupied by or assigned to any other person, and that it was not a Natural Oyster Rock or Bed, with in the meaning of the statute; and he undertook and promised to lay off, designate and assign the said grounds to your petitioner. Your petitioner has posted notices of the said application to the said Reps Williamson, Inspector, for the said oyster-planting grounds, at the front door of the Court House of Nansemond County, and also at two conspicuous places near said grounds. The time required by law, that said notices shall be posted, before a legal assignment of the grounds can be made, has not yet expired, to-wit 30 days. Your petitioner is ready, willing and anxious to pay all fees, dues and rents for the assignment of said grounds, as required by law, as soon as they become due and payable, or your petitioner is assured of the right to occupy said grounds.

Your petitioner is informed that one S.J. Thompson has made application for the aforesaid grounds and has requested Reps Williamson, Inspector, to lay off and assign the same to him; that the application of the said S.J. Thompson was not filed with the Inspector until after the application of your petitioner as aforesaid; that said S.J. Thompson is not a renter nor an occupant of said grounds, that he has no recorded plat of said grounds, that he had not planted or set, until the 24th. day of March, 1900, any stakes or buoys designating said grounds, that he has or has had no oysters planted on said grounds and that he has not, within the last two years paid any rent for the same to the Commonwealth of Virginia. Your petitioner is informed that, unless prevented by your writ of injunction, the said Reps Williamson, Inspector, will set-apart, designate and assign the aforesaid oyster-planting grounds to the said S.J. Thompson, in total disregard of your petitioner's rights as the first applicant and contrary to the statute in such case made and provided.

For as much as your petitioner is remediless in the premise save by the aid of a court of equity, where all such matters are properly cognizable, your petitioner prays that your Honor will issue your writ of injunction, directed to the said Reps Williamson, Inspector as aforesaid, enjoining and restraining him and all of his deputies, agents servants or other persons, from assigning or attempting to assign, the above described oyster-planting grounds, or any part thereof, to S.J. Thompson, his agents, assigns, or trustees or to any other person not lawfully entitled thereto, until the further order of the Circuit Court of Nansemond or the Juage thereof in vacation. And your petitioner will ever pray etc.

and S.J. Thompson from occupying said grounds

Robt. W. Withers, p.q.

T.J. Thompson

#2.

Virginia,
Nansemond County, to-wit:-
I Lee Britt, a Commissioner in Chancery of the Circuit Court ~~in~~ for the County and State aforesaid hereby certify that T.J. Thompson whose name is signed to the writing above, this day appeared before me in my County aforesaid and being sworn, makes oath and says that the statements made in the above writing, which he declares of his own knowledge, are true; and that the statements therein made on information, he believes to be true.

Witness my hand this 28 day of March, 1900.

Lee Britt
Commissioner in Chancery

IN THE CIRCUIT COURT OF NANSEMOND, NANSEMOND COUNTY, TO-WIT:)-
IN VACATION: MARCH 28th, 1900.

T.J. Thompson ——————— Petitioner,

vs. } In Chancery

Reps Williamson, Oyster Inspector. and S.J. Thompson } ——— Defendants.

On motion of the petitioner an injunction is awarded him, enjoining and restraining the said Reps Williamson, Oyster Inspector for Nansemond County, and all of his deputies, servants and agents and other persons from assigning or attempting to assign the 10 acres of oyster-planting grounds in Nansemond River at a point on said river known as "New Channel", off "Stockley Farm" and on the Northern edge of the channel of said river (the same for which an application for an assignment has been made by T.J. Thompson) or any part thereof, to S.J. Thompson, his agents, assigns, or trustees or to any and S.J. Thompson from occupying said grounds other person not lawfully entitled thereto, until the further order of the Circuit Court of Nansemond County or the Judge thereof in vacation. But before the petitioner shall have the benefit of this injunction order, he or some one for him, shall enter into bond in the penal sum of $150.00, payable to the Commonwealth and conditioned to pay all such costs as shall be awarded against him, and all such damages as shall be incurred by any one by reason of this injunction, should this injunction be dissolved. The petitioner shall give security on the bond, deemed sufficient by the Clerk of this Court.

Robert R. Ellis Judge.

To the Clerk of the Circuit Court of Nansemond County.

Tax $1.50 Paid

T. J. Thompson

vs } In Chy.

Reps Williamson, Oyster Inspector

Petition for and Order of Injunction

In Vacation
March 28 1900

Robt. W. Walker, p.q.