

1919-003
Nansemond Co (Suffolk)

Chancery Causes: Petersburg Excelsior Mills vs Charles E. Duke

Quintin, Copeland, Rosenitch, Holland, Cowling

OVERSIZE

Box 3

- 2 Plats (exhibit E)

6 Withers

3 of them 2 legs
ed ch.

Exhibits

Suball from
in

RT Kewler

Stonographer

\$5.00

HIRS TOKO, GOEDELLE GINGER ALE, SODAS, ALL FLAVORS,
FANCY GROCERIES, CAKES, CRACKERS & CANDIES.

SUFFOLK, VA.

~~Call to see~~

A D H R and

Suffolk, Va. April 19th, 1917.

Mr. J. R. Saunders, Atty. for Mr. C. E. Duke,
and Mr. C. E. Duke,

Suffolk, Va.

Gentlemen:-

This is to inform you that Mr. J. V. Woodward, assignee of Mr. E. P. Holland, has brought a warrant against us to recover the sum of \$50 which he alleges is due to him for wood which we cut from his land, as he alleges, and which said wood was sold and delivered by you to us, by your deed of May 12th, 1916. We were strangers at that time to the land on which this wood was cut and you were perfectly familiar with it. You showed us the lines and helped to mark and chop the trees designating the lines of the land which you claimed to be yours and from which you sold us this wood. The wood was cut distinctly within the boundaries of the land which you designated and sold to us.

The case will be called for trial at the office of R. H. Hawles, in Suffolk, Virginia, at 3 o'clock P. M. on Saturday, the 21st day of April, 1917, and you are hereby notified to be present and protect your interest if you desire to do so.

In case we should be compelled to pay Mr. Woodward for this wood, for which we have already paid you, we shall certainly hold you legally responsible for the amount which we may have to pay.

Respectfully yours,

Copy mailed to C. E. Duke
and copy delivered to J. R.
Saunders, Attorney for C. E.
Duke, on April 19th, 1917.

*Peterburg Exclusion
Mills Inc. &
Attorneys ally.*

K. C.

24 b.

Virginia:

In the Circuit Court for the County of June 26th, 1917

~~Per xxxxx~~

J. V. Woodward

Plaintiff

Action of

versus

Petersburg Excelsior Mills, Inc.

Defendant

Judgment in favor of the Plaintiff against the Defendant for the
sum of FIFTY DOLLARS

\$ 50.00

With interest thereon at the rate of six per centum per annum, from
21st day of April, 1917 until payment

\$

\$

Subject to credit, viz:

And the cost of suit, \$ 1.50

A FIERI FACIAS issued from the Clerk's office of said court on the day of
19 returnable to the thereafter, directed to the
of the of who hath made return thereon in the words and figures following,
to-wit:

This judgment was duly docketed in the Clerk's
office of the Circuit Court of the County
of Nansemond on the 2nd day of May 1917
Judgment Docket No. 4 Page 12

Date of Judgment April 21, 1917
Teste:

G. E. Bunting

Clerk.

By Kate P. Bell D.C.

G. E. Bunting

Clerk.

By

Kate P. Bell

, D.C.

Ex. B.

Form No. 213.

J. V. Woodward

vs.

}

ABSTRACT OF
JUDGMENT.

Petersburg Excelsior Mills

Mr. Geo. E. Beutling Clerk of the Circuit
Court of Wakeham County:

Petersburg Excelsior Mills Inc., ~~Def~~

C. E. Duke

Agit.

Issue summons for plaintiff against
defendant to ~~the~~ Second June Rule 1917
(Third Monday in June) to answer a
Bill in Chancery.

R. H. Coles f. g.

Memo for Clerk

CHANCERY SUMMONS.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON.....C.E.Duke

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...third....Monday in....June, 1917....., to answer....a.....Bill in
Chancery, exhibited against.....him.....
in the said Court by..Petersburg Excelsior Mills, Inc..

And have then and there this summons.

Witness. G. E. Bunting, Clerk of our said Court, at his office, this.....12th.....day of
June....., 1917, in the 1341...year of the Commonwealth.

A copy—Teste:

Teste:

Clerk

Clerk.

Executed this 15 day of January, 1917. by delivering a true copy of the within process
to C. E. Duke

in person, in the County of Nansmond, State of Virginia.

E. E. Wagner
Sheriff.

.....R. H. Rawles....., p. q.

.....Petersburg. Excelsior. Mills, Inc.

vs. } In Chancery.

.....C. E. Duke.....

1917...

.....June..... Rules.

.....Third..... Monday.

NANSEMOND COUNTY COURT,

Process Book, No. 3....

Page... 1...

In the Circuit court of Nansemond county ;

Petersburg Excelsior Mills Inc.

vs

C. E. Duke.

Left.

By consent of all parties, plaintiff and defendant, in this cause, it is ordered that the papers in this cause may be submitted to the Judge of this court in vacation, for ~~for~~ such judgment, order, or ~~decree~~ therein, in vacation, as might be made in term

Decree for
Vacation Case.

Petersburg Excelsior Mills

T.
C. E. Duke

1919

Enter Oct. 31, 1919.

John W. Moore,

Entered in Chancery

Order Book No. 5

Page 125.

We consent to this

decree: R. H. Leach atty
for Plaintiff
John W. Moore
for Defendant

R. H. RAWLES
Attorney at Law and Notary Public
SUFFOLK, VA.

Oct. 19th, 1918.

Petersburg Excelsior Mills, Inc. vs. C. E. Duke.

Judge Jas. L. McLimore,
City.

Dear Judge:-

In my brief of yesterday I stated that according to the calculations Duke was 41 cords short on the estimate of timber we expected to get; I find I was in error on the calculation; he was only short in all 21 cords.

Very truly yours,

R. H. Rawles

June 25th, 1918.

Mr. John K. Hutton,
City.

Dear Sir:-

I am herewith enclosing copy of a letter received from the Petersburg office, in the C. E. Duke matter, from which it appears that 1386 pens were cut from the C. E. Duke land. This included, however, the 129 pens which were cut over the line on Woodward's land. This deducted from the 1386 pens leaves 1257 pens cut on the 20 acre tract. This wood runs 6 pens to the cord, and therefore shows that they only got 209 cords of wood from this tract. At that time they were buying excelsior wood at \$1.00 per cord on the stump. From this it will be seen that they paid Duke \$509 for \$209 worth of wood, which was a very bad bargain for them. I am informed that all of the wood was cut except about one cord before the shortage was discovered; that is before the survey.

Since you have called for this testimony I think it proper that it should go in as a part of the evidence.

Very truly yours,

Att. Records.

STATE OF VIRGINIA:

City of Petersburg, to-wit:

I, D. Scott Quintin, Secretary and Treasurer of the Petersburg Excelsior Mills, Incorporated, of the city of Petersburg, Virginia, having been duly sworn do swear that twelve hundred and fifty-seven (1257) pens is the quantity of wood and all the wood that we cut from the tract of land purchased by the Petersburg Excelsior Mills, Incorporated, from Charles E. Duke, and wife, by deed dated the 12th day of May, 1916, said tract of land having been described in said deed as containing about thirty (30) acres, more or less; that the above number of pens make two hundred and nine (209) cords of wood; that the market price of such wood on the stump at the date of said deed was one (\$1.00) dollar per cord; that all of said wood was cut and removed from said tract of land except about one (1) cord, before we had a survey of said land and before we discovered that there was a deficiency in quantity of said land as described in said deed.

Witness my hand this 28th day of June, 1918.

D. Scott Quintin
Secretary & Treasurer

Signed, acknowledged and sworn to before me, Charles
W. Sandford, a Notary Public for the city of Petersburg, in the State of Virginia, by D. Scott Quintin, on this 28th day of June, 1918. My term of office expires on the 10th day of September 1918.

Given under my hand this 28th day of June, 1918.

Charles W. Sandford
Notary Public
City of Petersburg, Virginia

Additional
Zertimay

VIRGINIUS COPELAND, being duly sworn deposes and says as follows:

Examined by R. H. Rawles.

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

A. Virginius Copeland, 51 years, Nansemond County, Virginia, farmer and wood cutter. I know the parties.

Q. State whether or not you were close to the Duke line the day that Mr. Charlie Duke and Mr. John Rosenitch tried to find and slip the line between Mr. Duke and Mr. Holland?

A. Yes sir, I was there.

Q. What were you doing there that day?

A. Cutting wood.

Q. Did you see Mr. Duke and Mr. Rosenitch on that occasion?

A. Yes sir.

Q. State what Mr. Rosenitch had with him?

A. He had a hatchet.

Q. What did Mr. Duke have with him?

A. One had an axe and one had a hatchet.

Q. Which did Mr. Duke have?

A. Mr. Duke had an axe.

Q. What did they say they had been doing that day?

A. Been slipping that line.

Q. Between whom?

A. Mr. Duke and Mr. Holland.

Q. Had you ever seen any slipped line between Duke and Holland before that day?

A. No sir.

Q. State if you have seen any slipped line since that day?

A. Yes sir.

Q. Something has been said in this case about 20 pens of wood having been cut over on Mr. Holland's land. Do you know who cut these 20 pens of wood?

A. Henry Parker.

Q. Who was he working for?

A. He was working for Mr. Rosenitch.

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Q. Now please state whether these 20 pens of wood were cut before those slipes were made or cut afterwards?

A. It was cut before they was made.

Q. How do you know they were beyond the slipes if they were cut before they slipes were made?

A. Why they come to me, you see I hadn't gotten down that far, on the day that Mr. Duke and Mr. Rosenitch was in there.

He had cut a good many trees and he says - I am over the line, but I cut these trees down and I must cut them up, and he cut ~~tham~~ up and it made 20 pens of wood.

Q. Is it not a fact that these 20 pens of wood were cut after that day and after the lines were sliped?

A. Unless they made two slipings them 20 pens was cut after the line was sliped.

Mr. Hutton:

Last question objected to as leading.

Q. Did you not tell me today that 20 pens of wood were cut across the line, after the line had been sliped?

A. I said they were cut after it was sliped.

Q. Now, you say the 20 pens of wood were cut after the trees had been sliped?

A. Why then did you say a few minutes ago that they were cut before the line was sliped. Did you understand the question or not?

A. I meant to say that ~~the~~ 20 pens of wood was cut after the slipes had been made.

Q. Refresh your memory now, before you answer this question.

Tell me, if you know, if those 20 pens of wood were cut before the trees were sliped that day, or if they were cut after the trees were sliped?

A. They was cut after the trees was sliped.

Q. Are you sure about that?

A. Unless they sliped - I don't know whether they made two slipings or whether they made one. I started to say when Mr. Duke and Mr. Rosenitch come to me, where I was cutting a big tree you know, I

was close enough to see the slipes, and Mr. Rosenitch cautioned me and said don't go beyond them slipes.

Q. Was Mr. Duke present? And did he hear Mr. Rosenitch when he told you not to go beyond the slipes?

A. He was present.

Mr. Hutton:

Question objected to as leading the witness.

Q. Did Mr. Duke raise any objection to that statement?

A. I never heard none.

CROSS-EXAMINATION.

Examined by J. K. Hutton.

Q. Virginius, you were raised right in the neighborhood of that little tract of land were you not?

A. Yes sir, not very far.

Q. You were familiar with the lines?

A. No sir.

Q. Where were you standing when Mr. Duke and Mr. Rosenitch were tracing the line on that day that you speak of?

A. I was at my work cutting.

Q. Was not Mr. Duke standing right near a green pine and were you not cutting close to where he was standing at that pine?

A. I don't remember.

Q. Now you say that you saw Mr. Duke and Mr. Rosenitch slipping the line on that day?

A. No sir. I didn't say that. I never saw one of them slipe a tree in my life.

Q. Didn't you hear Mr. Duke holler to Mr. Rosenitch on that day?

A. Not as I know of ~~ix~~ sir.

Q. Well, what was he doing when you saw him?

A. They come to me from where they slipped the line to a big tree and when they left me, I reckon each one of them went home when they left, I reckon, I don't know. I was at my work and didn't pay any more attention to them.

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Q. Where were you when they come to you?

A. I was in the woods.

Q. How close were you to the line they were supposed to be slipping?

A. I was close enough to see the slipes.

Q. Didn't you just testify that you didn't see either one of them slipe a tree?

A. Certainly never see one of them slipe a tree since I 've been born, 'cause when I am at work I am not watching everything.

Q. Do you mean to say that you were close enough to see the slipes on the trees, and see if they slipped a line, and yet, you didn't see either one of them slipe a tree?

A. I certainly never see one of them slipe a tree in my life.

Q. Now Virginus, you say they told you that they were tracing a line through there, did they?

A. Well, yes sir, were tracing a line.

Q. Who told you that they were tracing a line?

A. Well, it was one of them, I don't know. Well, you see Capt. John told me don't go beyond the slipes, and if he hadn't done it I wouldn't have known it.

Q. Virginus, are you absolutely certain that Mr. Duke had an axe on that day?

A. He had an axe and Mr. Rosenitch a hatchet.

Q. But you didn't see him use the axe?

A. No, I hain't seen him slipe nothing.

Q. Now if Mr. Duke were to take the stand heretoday, and say positively that he did not have an axe on that day, wouldn't you then say that you might possibly be mistaken in your memory?

A. When I say a thing I hate to say another way.

Q. Now Virginus having stated that you can remember exactly what they said to you, and you can remember exactly what each one had, and you were close enough to see the slipes on the trees, and yet you didn't see either of them slipe any trees?

A. Well, I told you what I didn't see, I didn't see them slipe them trees.

Q. And you didn't see that axe either?

A. Well you say so, and so I won't contradict you. I told you I saw it.

Q. Now Virginus, I understood you to testify that the 20 pens of wood were cut before the line was sliped. Is that true?

A. Well I said just now, I meant to say that the 20 pens - after it had been sliped is what I meant to say.

Q. How do you know that?

A. Well, I see the slipes.

Q. Did you help the man cut any part of that 20 pens of wood?

A. No sir.

Q. Were you present when the 20 pens of wood were cut?

A. I went to him where he was cutting, I come in from the other road making down to Mr. Bakers. Well, that is about all I knows about it, anyhow.

Q. Did you notice any slipes on that day you went there while he was cutting?

A. I cut right through, yes I noticed the slipes.

Q. Was he just finishing with the cutting or was he just beginning?

A. I think he had commenced the day before to cut down the trees you know. Went in late and cut down a parcel of trees, and he says I want to cut these trees up and when he cut them there was 20 pens.

Q. So you noticed the slipes in there the day you saw Henry Parker cutting the wood?

A. Yes sir.

Q. That is the first time you had seen the slipes then?

A. Yes, I hadn't been clean through the whole line no how, cause I had no business there.

Q. You do know that the day you went where Parker was cutting wood was after these gentlemen had told you they were tracing a line?

A. Yes, it was afterwards.

Q. How long after was it?

A. I couldn't tell you sir.

Q. Was it a week after?

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A. It might of been, I ain't sure.

Q. Was it two weeks after?

A. I couldn't tell you, 'cause I ain't sure.

Q. You dont know whether ~~it~~ was two months after or one day after?

A. No sir, I don't know.

Q. Now, I understand you to say that you don't know anything about that line that waa sliped through there; that you didn't see anybody slipe the line, and that you have never been over the whole line that was sliped in your life, but that you do know that Mr. Duke and Mr. Rosenitch came to where you were working one day and told you that they were tracing a line, and that Mr.

Duke had an axe and Mr. Rosenitch had a hatchet?

A. Ye s sir.

Q. Do you know how many cords of wood were cut off that place?

A. No sir, I don't keep no count of the wood except what I cut.

Q. How much did you cut?

A. I don't know.

Q. Who do you work for now Virginius?

A. The last work I ~~done~~ was for Mr. Rosenitch here.

Q. Who were you working for them?

A. ~~When~~ I was cutting wood?

Q. Yes.

A. Working for the Petersburg Excelsior Co.

And further this deponent saith not.

Signature waived by consent.

Hand Definitions

J. W. HARRELL,
DEALER IN
Heavy & Fancy Groceries,
CIGARS & TOBACCO.
PROMPT SETTLEMENT MAKES LONG FRIENDS.

Suffolk, Va., _____ 191__

M

MCCASKEY ALLIANCE, O.

Clerk

Account
Forwarded

1			
2	5.586	ft	Lumber
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

Your account stated to date. If error is found, return at once.

Sept. 7th, 1917.

TO MR. C. E. DUKE:

Please take notice that I shall proceed on Tuesday, the 18th day of September, 1917, between the hours of 8 A. M. and 6 P. M. at the office of R. H. Rawles, in Suffolk, Virginia, to take the depositions of John Rosenitch and others, to be read as evidence in my behalf in a certain suit in equity now pending in the Circuit Court of Nansemond County, wherein I am plaintiff and you are defendant. If from any cause the taking of said depositions be not commenced on that day, or if commenced, be not concluded on that day, then the same will be adjourned from day to day or from time to time, at the same place and between the same hours until the same shall have been completed.

Petersburg Excelsior Mills, Inc.,

By R. H. Rawles Counsel.

I hereby acknowledge receipt of the above notice and agree to the taking of said depositions at the time and place therein named.

C. E. Duke

Samuel P. Denton
Clerk

JOHN P. COWLING, being duly sworn deposes and says as follows:

Examined by R. H. Rawles.

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

A. John P. Cowling, legal age, Suffolk, Va., surveyor, I know the parties.

Q. How long have you been a practical surveyor?

A. Since 1868.

Q. Please state if you have within the past twelve months made any survey of a line between the lands formerly belonging to E. F. Holland and his wife and the lands of C. E. Duke, the timber on which Duke land was sold to the Petersburg Excelsior Mills?

A. I have.

Q. State about when you made the first survey of that line between the Holland land and the Duke land?

A. I think it was in the last of September, 1916.

Q. At whose request did you make that survey?

A. Mr. E. F. Holland's.

Q. Did you make a map and plat of that survey?

A. Yes.

Q. Will you please file that plat as an exhibit in this case?

A. Yes.

Plat is herewith filed, marked Exhibit "E", as a part of the evidence in this case.

Q. Who was present when you made the survey of that line?

A. Mr. E. F. Holland, Mr. Charlie Duke, Mr. Rosenitch was present a part of the time, and a colored man.

Q. Please look over your map marked Exhibit "E", and show us about where you began that survey on that date?

A. We began on the land of Mr. Holland and Duke and came to a corner pine tree on the land of Mr. Duke and Holland.

This corner tree stands at the Northeast end of this twenty acre tract.

Q. From thence where did you proceed?

A. In a direct line 430 ft. to another pine on said map.

Q. Was Duke with you up to this point?

A. Yes sir.

Q. Did he and E. F. Holland assist you in finding the line to this point?

A. Yes.

Q. Then from that point where did you go?

A. Onward 141 ft. another same course.

Q. Thence where did you go?

A. I continued a straight line bearing.

Q. Please state who was with you up to this point, the tree marked 141 ft?

A. Mr. Duke, Mr. Rosenitch, Mr. Ed Holland and a colored man.

Q. Please state whether Mr. Duke remained with you longer and showed you the remainder of the way down this line?

A. No sir, he left. When we came to where they had gone over the straight line, he left.

Q. Do you know why he left at the time when he got to the very point which seemed to be in dispute?

A. No, he gave no reason for leaving that I know of.

Q. The line you were then surveying was then somewhat in controversy, was it not?

A. It was.

Q. There was some question as to whether the parties to whom Duke had sold the wood had not cut over Duke's line and on the land of E. F. Holland, was there not?

A. Yes.

Mr. Hutton:

Question objected to as leading.

A. (continued). That was the very reason I was there surveying the line, because Mr. Holland claimed that Mr. Rose-nitch was cutting timber over on his land.

Q. Then your purpose in making that survey was to find the true line between E. F. Holland and C. E. Duke?

A. It was.

Q. And yet, you say under these circumstances, while Duke went with you until he reached the point where the line was disputed, as soon as he did reach that point he left you and gave you no further assistance. Am I right?

A. No farther, except to send his demented son, in the afternoon.

Q. Was that son capable of giving you any real assistance in finding the line?

A. None whatever.

Q. Please state now, after you left the tree marked on the plat 141 ft. what course you then pursued and where it took you?

A. I continued the same bearing S. 17 W.

~~xxxDidthisbearingandxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~
Do

Q. ~~Are~~ these bearings and courses you are now speaking of appear on the small map marked Exhibit "F"?

A. They do.

Q. Will you file Exhibit "F" as a part of the testimony?

A. Yes.

Plat is herewith filed, marked Exhibit "F",
as a part of the evidence in this case.

Q. Please state what is the real difference, if any, between these two plats?

A. The difference is, the small map is a survey of the 20-1/10 acres, and is on a scale of 200 ft. to one inch, and the large map is only 100 ft. to the inch, and shows an addition marked in red ink lines and contains 1.71 acres.

A. To a dead pine marked a line on the map.

Q. Thence where did you go?

A. Thence on to a corner pine. .

Q. On whose corner is that?

A. Corner of Ed Holland and James Woodward.

Q. Please state if that corner pine is on the Southeastern corner of that 20 acre tract?

Mr. Saunders:

Question objected to as leading.

A. Yes, it is.

Q. Please state if that line leading from the first corner pine on the Northern end to the last corner pine you have mentioned on the Southern end was the line claimed by E. F. Holland?

A. Yes.

Q. Then, if I understand you, in surveying this line you found one marked line tree at the Northern corner?

A. Yes.

Q. Then on this straight line leading from the corner tree at the Northern part of the 20 acre tract to the corner tree at the Southern part of the 20 acre tract, you found four distinct chopped line trees, as shown on the map? Is that correct?

A. That is right.

Mr. Saunders:

All above questions objected to as leading.

Mr. Rawles:

To which objection the counsel for plaintiff says the map itself shows these facts.

Mr. Saunders:

Counsel for defense contends that witness should explain the map ~~itself~~ himself and not have his counsel explain it.

Q. Please state if you made a second survey of any part of this land, and if so, when?

A. Yes sir, I made the second survey in October, 1916.

Q. What did you survey on that occasion?

A. I surveyed the 20-1/10 acres as shown by those maps.

Q. Who showed you around the lines when you made that second survey of the 20 acres?

A. Mr. Rosenitch showed me.

Q. Mr. Duke was not present on that occasion was he?

A. No sir.

Q. Do these two maps both show the correct areas as stated herein, of the tractsof land?

A. Yes sir.

Q. Please state if you made a third survey, and if so, when?

A. I made a third survey yesterday.

Q. At whose request did you make that survey?

A. Mr. Rosenitch's.

Q. Who showed you the lines you ran in that third survey?

A. Mr. Rosenitch showed me the sliped trees.

Q. Where did you begin your survey on yesterday - on the map?

A. At 141 ft. from the 2d pine as shown on Exhibit "E".

Q. Did that take you around a certain line of sliped trees lying on the east of the 20 acre tract?

A. It did, as shown by a red line on the map.

Q. Please state if you found any trees marked in any way on that line, and if so, how were they marked?

A. I found sliped trees up to an arrow pointing to a pine on a mound marked sliped on the map. I saw no chops.

Q. Well then, did you find any other sliped trees after you left there?

A. I found other sliped trees until I got to two dead pine stumps indicated on the map.

Q. Please state whether or not you found any chopped line trees on that line?

A. None that I could see.

Q. Did you find anything on that line indicated by red ink on the map which you regarded as a chopped line tree?

A. No sir.

Q. Please state if in following the line of sliped trees it brought you back to where E. F. Holland claimed to be the true line, and if so, at what point?

A. It brought me back to it, as shown on the map, a short distance beyond a dead pine.

Q. Please state what the area was of this tract of land lying between the line of slipped trees on the one side and where E. F. Holland claimed to be the true line on the other side?

A. I found it to be 1.71 acres.

Q. These are the only three surveys you have made, are they Mr. Cowling, of this land?

A. Yes, they are the only three I have made and they are shown on those two maps.

And further this deponent saith not.

Mr. Saunders:

Counsel for the defendant reserves the right to put the above witness on the stand for cross-examination.

Mr. Rawles:

Counsel for plaintiff states that the witness who has just been examined is present and submitted himself for cross-examination, and counsel for plaintiff insists that the ~~cross~~-examination should go on and will object to any cross-examination of said witness hereafter.

Mr. Saunders:-

Counsel for defendant asks that the above witness file each and every note made by him in making above maps and state the name of each man who gave him any information concerning the lines referred to in each of said maps, and whether or not C. E. Duke was present at any time any map was made, or if C. E. Duke was given notice at any time that any map was to be made (this is in reference to both maps and surveys); and if C. E. Duke was notified at any time that either map or survey was made, that a copy of the letter written to Duke be filed with the evidence in this case.

Mr. Rawles:

To which counsel for plaintiff replies that the witness who is called upon for the above information is not present, having left the stand and left the room, being dismissed by the attorney for the defense, who said he did not desire to cross examine him today; counsel for plaintiff further states that witness has already testified that Mr. Duke was notified and was present when the first survey, which involved the only line in dispute between the parties, was made, and that he voluntarily left before the survey was finished; counsel for plaintiff further states that it is not usual for people interested in the controversy to be present when the surveyor makes his maps or plats.

JOHN ROSENITCH, being duly sworn deposes and says as follows

Examined by R. H. Rawles.

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

A. John Rosenitch, 35 years, Nansemond County, I am the agent of the Petersburg Excelsior Mills, Inc., in this county, and buy and cut wood for them. I know the parties.

Q. How long have you acted as agent for the Petersburg Excelsior Mills?

A. Four years.

Q. Please state if you made the bargain to purchase the timber on a certain tract of land in this county of Mr. C. E. Duke for the Petersburg Excelsior Mills, Inc., as indicated by your deed filed in this case?

A. Yes.

Q. At the time you made the purchase of that timber who knew about that land best, you or Duke?

A. Mr. Duke.

Q. Please state whether or not you were a stranger to it?

A. Yes sir.

Q. In making that purchase of that timber, please state whether or not you relied on Mr. Duke's statement concerning it?

A. I took his word for it.

Q. The deed says he sells you the timber on a tract of land containing thirty acres, more or less - is that correct?

A. Yes, that is correct.

Q. In looking over this land how many acres did he tell you this tract contained?

A. He told me it was between 30 and 40 acres and he put 30 acres in the deed.

Q. Did you rely on that statement in making the purchase?

A. Yes.

Q. The deed says you paid him \$500 for it - is that correct?

A. Yes sir.

Q. Please state whether you would have paid \$500 for it if you had known the tract contained only 20 acres?

A. No sir, never.

Q. When you purchased this tract of land did Mr. Duke show you the lines around it and show you the tract of land?

A. Yes. -

Mr. Saunders:-

Counsel for defense objects to counsel for plaintiff refusing to let the witness answer and stopping him in the middle of his statement he is about to make.

Q. Please look at this map and state where you and Mr. Duke started when he showed you the lines?

A. He showed me right there from that old pine stump (witness indicating on map with finger) at the Northwestern corner of the said 20 acre tract.

Mr. Saunders:-

It is agreed at this point that the attorney for the defense shall within a reasonable time cross-examine the witnesses that are here testifying today.

A. (continued) . Then he carried me right there to that corner pine (witness indicating a corner pine on the Northeast corner of the said 20 acre tract, on said plat).

Q. Then where did he carry you ?

A. He then carried me to this other pine (witness indicating on the map the first tree on the line running south from the corner.)

Q. Where did he then take you?

A. He carried me to the third pine in the same line.

Q. Then where did he carry you?

A. From ~~here~~ here there (witness indicating the last point on the map) he did not know the line, so he said that there ought to be a crooked pine somewhere but he could not find it. So we did not look any more along that line, but we looked for a corner pine.

Q.

Q. Where did he carry you to get to that corner pine?

A. From that corner pine (witness indicating the corner pine at the Southeast corner of said 20 acre tract) he carried me to a stump (witness indicating stump on the map).

Q. Now then, where did he carry you?

A. From there he did not have a line so he came here and found the two dead stumps (witness indicating two dead stumps along the red dotted line on said map marked 1 and 2 in pen), so he followed this red line as indicated on map and we slipped it to a pine stump which he claimed was the line. (witness indicating a stump on a mound pointed to by an arrow on map) and from said point he carried me to that pine where we first started.

Q. Did you find any chopped line trees on that last line he showed you around?

A. There is two stumps he said looked like they has 3 chops and so he claimed that was the line.

Q. Well now, what did he find along here?

A. He came to a stump pointed to by an arrow.

Q. Did he slip any trees or not?

A. They is all slipped here.

Q. When you left the dead stump here marked No. 2 and came to the stump to which the arrow points, please state if you found any line trees between these two places?

A. No, there is not a line tree in there.

Q. How did he indicate the line around here?

A. He slipped it.

Mr. Saunders.

Counsel for defense objects to counsel for plain tiff argueing with the witness on the stand and asks that every word he has said to the witness on the stand be copied on the record.

Q. Then, if I understand you, in going around this line which is indicated by red on the map, Mr. Duke slipped the trees as he went. Is that true?

A. Yes, it is.

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Q. I also understand that you did not find any line trees along there?

A. No, we did not.

Q. State if Duke told you all the land that lay on the east side of this line was his property?

A. Yes, he claimed that was his porperty - in other words, he sold me Mr. Hol land's timber and not his timber.

Mr. Saunders:

Question objected to as leading.

Q. Were you present on yesterday when Mr. Cowling made a survey of this land?

A. Yes.

Q. Please state whether or not you showed Mr. Cowling along the very same sliped lines that Mr. Duke to ok you over and sliped?

A. Yes sir.

Q. Did you find the trees that you and Mr. Duke sliped?

A. Yes.

Q. Did you show Mr. Cowling also, the straight line which Holland claimed as his line?

A. Yes sir.

Q. I understood you to say in answer to a question a few moments ago, that Mr. E. F. Holland claimed that you had crossed over and cut timber on his land. Is that right?

A. Yes, which he claimed.

Q. How many pens did you cut over the land claimed by Mr. Holland?

A. 129

Q. About how many cords would that make?

A. Somewhere between 22 and 26 cords.

Q. State whether Mr. Holland would permit you to move this wood or not?

A. He would not permit me to move it before I paid for the wood.

Q. Holland afterwards sold the land to J. V. Woodward as shown

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by the record did he not?

A. Yes.

Q. Would Woodward permit you to remove the wood until it was paid for?

A. Mr. Woodward said if I was willing to pay I could move that wood out.

Q. The record shows that Woodward as assignee of Holland afterwards warranted your company for this wood - is that correct?

A. Yes sir.

Q. The record also shows that he obtained judgment against your company - is that correct?

A. Yes.

Q. Your company paid him the amount of this judgment, did it not?

A. Yes , \$50 and the cost.

Q. Please state whether Mr. Duke has ever shown a willingness to reimburse you or repay you for the shortage in this land?

A. No sir.

Q. After you had your survey made, showing that the tract which he delivered to you contained only 20-1/10 acres, did you notify him of the shortage?

A. Well, I see him once and I told him I wish he would settle for that and pay me for the 129 ~~xxxt~~ pens and he said he could not do it.

Q. Did you tell him that the land which he sold you for 30 acres did not contain but 20-1/10 acres?

A. I told him 30 was what the deed called for and he answered me that he sold me on lump the timber, which I never have talked with him about acreage.

Q. In cutting the time which you purchased from Duke, you cut up to the sliped line which he showed you, did you not?

A. Yes sir.

And further this deponent saith not.

E. F. HOLLAND, being duly sworn deposes and says as follows:

Examined by R. H. Rawles.

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

A. E. F. Holland, 37, Nansemond County, Va., farmer, I know the parties.

Q. Mr. Holland, please state whether you or your wife formerly owned a tract of land in Nansemond County, adjoining the land of Mr. C. E. Duke?

A. My wife owned a tract adjoining Mr. C. E. Duke on the east.

Q. Is that the tract you afterwards sold to Mr. J. V. Woodward?

A. Yes.

Q. Did she own this tract of land at the time Mr. Duke sold certain timber on this adjoining tract to the Petersburg Excelsior Mills, Inc.?

A. Yes sir.

Q. Do you act as agent of your wife in the management of her outdoor affairs?

A. Yes.

Q. Will ^{you} please state whether or not you caused a survey to be made of a line between your wife's land and the 20 acre tract of Mr. C. E. Duke?

A. Yes.

Q. About when was that survey made?

A. The latter part of Sept. 1916, I don't remember the exact date.

Q. What caused you to have this survey made?

A. Why, I thought that the Petersburg Excelsior Mills Co. had cut some wood - excelsior wood on my land and I wanted to identify the line; I didn't know just what they had done.

Q. On the day that you made the survey, please state whether you notified any person to be present, and if so, whom?

A. I notified Mr. Duke and Mr. Rosenitch, and all those that I bounded.

Q. Please state who was present when the survey began?

A. Mr. Duke, a colored fellow, Mr. Cowling and myself.

Q. Did Mr. Cowling make the survey at your request?

A. Yes.

Q. I now hand you a map filed by Mr. Cowling, a plat of his survey, marked Exhibit "E". Please look at this map and state about where you first began on that day?

A. We began at the road on the northern part of my land, and we came on to the westward line of my land between Mr. Duke and myself.

Q. Please state if you found a corner tree on Mr. Duke's land?

A. We found a corner tree in a branch.

Q. Will you look on the map and identify it?

A. Witness looks on the map and identifies the tree standing at the northeast corner of the 20 acre tract.

Q. Did you identify that as a line tree?

A. We identified it by chops.

Q. From that point in what direction did you then go with your line?

A. We went in a southerly course to an old chopped pine (witness indicating on map pine marked No. 3 on plat.)

Q. Did you find that a well marked line tree?

A. Yes, well marked and old, and as I say this stood in a branch, and we then got our course for the line from these two trees and followed on until we come to the other corner, the southeasterly corner of the 20 acre tract.

Q. You found these trees by following a straight course?

A. Yes, we found one (witness indicating tree No. 4) just before we got to the corner and then found the corner tree.

Q. Were both of these trees marked, and if so, how?

A. The one next to the corner was an old lightwood stump, solid lightwood with 3 plain chops on each side.

Q. Did that appear to be very old?

A. Very old. The corner is a green pine, I don't know exactly

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the size of it, but it is an old tree, and that is marked for a corner, that is marked on four sides.

Q. Now, do I understand you to say that all of these trees from one corner to the other are in a straight line?

A. Yes sir.

Q. When Mr. Cowling first started to make his survey, beginning at the northern corner and coming to tree No. 3 did he know then what he would find down there?

A. Not at all, and neither did I, I had never been there. I didn't know they were ^{there} and neither did he.

Q. But by going a straight course indicated by your line at these two trees, did it bring you directly to tree on the corner and to tree marked No. 4 on the corner?

A. Yes sir.

Mr. Saunders:

All questions are objected to on the ground that they are leading and suggest the answer.

Q. Mr. Holland, have you lived in that immediate neighborhood all your life?

A. Practically, say, within about two or three miles, the better part of my life.

Q. Have you heard old people speak of that line?

A. I have always known it spoken of as a straight line.

Mr. Saunders:

Question and answer objected to on the ground that it is hearsay, and the line trees themselves are the best evidence, the witness having said they were there.

Mr. Rawles:-

Counsel for plaintiff answers that in matters of boundary lines, hearsay is competent testimony.

Q. Please state whether Mr. Duke on that day made any statement as to his line and as to his course?

A. Yes, he told us that the line was straight, or was supposed to be a straight line from that corner to the back corner.

Q. Do you mean the line beginning at the Northeast corner of

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the 20 acre tract and running to the line on the Southeast corner of the 20 acre tract?

A. Yes.

Q. And Mr. Duke told you on that day that the boundary line from one of these corners to the other was a straight line?

A. Yes sir.

Q. Have you ever heard this line disputed before?

A. No.

Q. Please state, in all your meanderings in these woods, whether you have ever found any well marked trees that would indicate any different lines?

A. No, there is some old stumps, but nothing to be depended on as a line marker.

Q. After Mr. Rosenitch, agent for the Petersburg Excelsior Mills, had acquired this timber on the 20 acre tract, please state whether he cut over and across this straight line on your land?

A. Yes.

Q. Do you know why he crossed that straight line, or did he ever tell you why he came over there?

Mr. Saunders:

Question is objected to on the ground that Mr. Rosenitch has taken the stand, and the number of times that he may have repeated the same statement would not add to the truth or falsity of that statement

A. Well, there was nothing to indicate the line that has been run over.

Q. Have you noticed in recent years any slipped trees on the land lying east of this ~~xxix~~ straight line?

A. Yes.

Q. Was the wood which Mr. Rosenitch cut on the land belonging to your wife, between the line of slipped trees and what you designate the true line?

A. Yes.

Q. Please look at the map and indicate or tell us, if in your

opinion it represents about the shape of the piece of land, or the bulge of land which Mr. Rosenitch cut over on your land?

A. About as near as a man could get through there with a line. I just as well tell the whole truth about it, there was 20 pens of wood cut beyond the red line indicated on the map marked Exhibit "E".

Q. How many pens of wood did you claim was cut over on your land?

A. 129.

Q. Did that 129 include the 20 pens you have alluded to?

A. Yes sir.

Q. You forbid Mr. Rosenitch to remove that wood until you were satisfied about its payment?

A. Yes, I stuck up a notice on this straight line, that it was not to be moved until somebody paid me for it

Q. And you afterwards sold the tract of land to Mr. J. W. Woodward.

A. Yes sir.

And further this deponent saith not.

At the request of counsel for the defendant the further taking of these depositions is adjourned and continued at the same place until Monday morning, September 24th, 1917, at 10 o'clock.

Suffolk, Va., Sept. 24th, 1917.

Note made by R. H. Rawles, counsel for plaintiff:

When the foregoing depositions were taken by R. H. Rawles, counsel for plaintiff, pursuant to notice, at the office of R. H. Rawles, in Suffolk, Va., on the 18th of September, 1917, J. R. Saunders, counsel for the defendant was present, as shown by the record. He failed and refused on that occasion to cross-examine any of the three witnesses introduced by the plaintiff, giving as his reason therefor that his client, C. E. Duke was not present. Counsel for plaintiff then and there insisted that the cross-examination, if there was to be any, should proceed forthwith, while the witnesses were present. It was agreed, however, by counsel for plaintiff, that he would notify the witnesses to appear again at the same place on a day to be agreed upon (at the cost of the defendant, however) and submit themselves for cross-examination. Counsel for plaintiff and defendant both then and there agreed that the same witnesses should appear at the office of R. H. Rawles, in Suffolk, Va., at ten o'clock A. M. on Sept. 24th, 1917, for cross examination. On this 24th day of September, 1917, all three of the foregoing witnesses duly appeared at the office of R. H. Rawles, in Suffolk, Va., for cross examination and waited in said office from ten o'clock in the morning until three o'clock in the afternoon. Counsel for defendant was notified on their arrival at ten o'clock A. M. that they were present and ready to be cross-examined. Counsel for defendant was again repeatedly notified during the day that they were present and waiting, but counsel for defendant again failed to appear at any time between the hours of ten A. M. and 3 P. M. to cross-examine said witnesses, and the said witnesses then left.

First Deflections

John Rosenitch called for cross examination as per agreement.

By John K. Hutton:

Q. When did you buy this timber from Mr. Duke?

A. May 15, 1916.

Q. Were you familiar with that timber?

A. No, sir.

Q. Where had you been living during the four years previous to May, 1916?

A. I lived right there on the same place I live right now - behind Mr. Duke.

Q. Did the place where you live adjoin Mr. Duke's property?

A. Part, but not that part where I bought. It adjoined part of Mr. Duke's land but not the part I bought.

Q. How far did you live from the part that you bought?

A. Well, I reckon about five minutes walk.

Q. And yet you say you were unfamiliar with that tract of timber?

A. I knew the timber, but which was which I did not know.

Q. You mean by that that you did not know the exact boundary lines of the tract you bought?

A. No, sir.

Q. Didn't you know the line between this tract and the James Woodward tract?

A. No, sir.

Q. You state then that you were not familiar with any of the boundary lines?

A. No, sir, I was not familiar.

Q. Did not you state to Mr. E. F. Holland about the time this deal was made that you did know the boundary lines of this tract of land?

A. No, sir.

Q. It is true that your place adjoins Mr. Duke's place from this corner pine stump three hundred feet to two oaks on the North side?

A. I can't tell just where my line is contiguous to Mr. Duke's land.

Q. Did Mr. Duke show you all of these lines before you bought the timber?

A. He showed me the lines as far as he knew.

Q. Did he show you all of the lines except the line in dispute?

between you and Mr. Holland?

A. Yes.

Q. Then when you bought the timber you did know the boundaries of the tract with the exception of that part of it between you and Mr. Holland?

A. Yes.

Q. Then how can you say that you were unfamiliar with that tract of timber when you purchased it.

A. Well, he showed me that. If somebody showed you something you were bound to know it.

Q. You have testified that Mr. Duke slipped a line of trees shown on map marked "Exhibit A" as a red crooked line. Is that true?

A. Both chopped; he chopped and I chopped.

Q. In your direct testimony, however, you testified that he did the slipping.

A. No, both did the slipping.

Q. Isn't it true, Mr. Rosenitch, that Mr. Duke took his stand at the Northeast point on the map where the red crooked line begins while you began on the Southeast point on the map where the red crooked line ends and that you yourself slipped the entire line ends and that you yourself slipped the entire line while Mr. Duke kept his position?

A. I got up here (witness indicates to point on the red line marked No. 1 on map) and then continued on to point marked No. 2 on map. He and I both chopped on continuing on to red line. We bushed out ahead and I followed up the red line. Well, now here is then two stumps; from here Mr. Duke has come to the next point to find the line (witness pointing down on red line) and then Mr. Duke has come here and here the red line stops somewhere. Where the line stops is an old green pine I was speaking. He stopped and said this is the line and then went on to the green pine at the end of the red line.

Q. Mr. Rosenitch, when this red crooked line was slipped, had you not already cut some of the trees on Mr. Holland's side?

A. No, sir.

Q. Now, I understand you to say that very first time you were shown these two dead pine stumps marked No. 1 on the map was same time that the entire crooked line was slipped?

A. Yes, sir.

Q. Who chopped those two dead pine stumps?

A. Mr. Duke did that--he showed me that for the line.

Q. You did not do any chopping there at all, did you?

A. No; on the stumps I did not chop.

Q. Did not Mr. Duke tell you before you purchased this timber that the line between you and Mr. Holland was a straight line?

A. I never heard nothing - I knew nothing about his line. Mr. Duke told me that there was a crooked pine but we never could find it.

Q. Didn't you tell Mr. Holland that Mr. Duke told you it was a straight course?

A. He told me that the line was a straight line but it turned out to be a crooked line.

Q. I don't care how crooked it was, he told you it was straight?

A. Yes, sir, he told me it was straight.

Q. When you did tell Mr. Holland that Mr. Duke told you it was a straight line?

A. I never told Mr. Holland it was nothing. Mr. Holland came on my place on Sunday morning and he told me I was over the line; that that was a straight line. That was all I knew it was a straight line.

Q. Then you were under the impression that this red crooked line was a straight line when you sliced it?

A. Certainly.

Q. It looked straight to you at the time?

A. Yes, it looked straight to me at that time in the woods.

Q. Then both you and Mr. Duke thought that you were slicing a straight course?

A. Yes, sir.

Q. Did not Mr. Duke call out to you when you were slicing this crooked line that you were off the course?

A. No, sir; he did not tell me that?

A. That was a right pretty little bunch of timber over on Mr. Holland's side, wasn't it?

A. No, not where I cut.

Q. Did you not, as a matter of fact, cut some wood beyond the red crooked line?

A. Yes; well this was how that was done. It is a path here and I started right here by Mr. Holland and the colored man who was cutting for us he started here and cut over the red line. One of the other fellows told me that Henry Walker is over the line. Then I walked up and told him that. I see them sliced trees and I have to battle with Mr. Holland so I walked to Mr. Holland and told Mr. Holland that I was over his line and cut his timber and Mr. Holland he never took time to come on and see about that wood so the colored man cut twenty many over the red line. That's all that was cut over the line.

Q. You testified that you would not have paid \$300.00 for that tract of land if you hadn't thought it contained 30 horses.

A. Yes.

Q. Now, Mr. Rosenitch, don't you think that tract of timber that you bought from Mr. Duke was well worth the sum of \$500.00?

A. It will not bring that money's worth to me.

Q. Your company lost money on that deal, didn't it?

A. Yes, sir.

Q. Do you know how much they did lose?

A. I can not tell; I do not work in the office.

Re-examined by R. H. Barlow:

Q. You have been asked on your cross-examination whether you ever went over the 80 acre tract before you bought it. Did I understand you to say that you had not been around the line until that day you bought it from Mr. Duke?

A. Yes, that is what I said.

Q. Did I understand you to say that you knew nothing at the time of the purchase of the line between you and Mr. Holland except what Mr. Duke told you?

A. I knew nothing except what he told me.

Q. If I understood you, upon your cross-examination you said that when the line between Mr. Duke and Mr. Holland was chopped or clipped, that both yourself and Mr. Duke clipped the trees.

A. Yes, sir.

Q. Did I also understand you to say that he went ahead at times and bushes out the way?

A. Yes, sir.

Q. Now, then, when you clipped a tree, who told you which tree to clip?

A. I clipped them the way Mr. Duke went.

Q. I understood you to say that you thought when you made this clipped line that you and Duke were running a straight line.

A. Yes, sir.

Q. It was in the woods, was it not?

A. Yes, sir.

Q. You could not see from the North end of this line to the South end of the woods?

A. No, sir.

Q. Is it not a fact that people in the woods when they have no compass will sometimes when they think they are going on a straight line go on a crooked line?

A. Yes, sir,

Q. Then both of you turned out to be mistaken in thinking

that you were slipping a straight line?

A. Yes, sir.

Q. Mr. Duke was selling the timber, was he not?

A. Yes, sir.

Q. It was up to him to show you the true line, was it not?

A. Yes, sir.

Re-cross examination by John K. Hutton:

Q. You testified just a moment ago that you had never been shown any of these lines until the day you purchased the timber from Mr. Duke. Is it true that some two or three weeks before you actually purchased the timber Mr. Duke carried you around the line?

before A. Yes, he showed me all the other lines two or three weeks ~~ago~~ except the line between him and Mr. Holland.

E. F. Holland re-called for examination.

By John K. Hutton:

Q. Mr. Holland, before this survey you had made, did you know the line between you and Mr. Duke?

A. No, sir.

Q. Didn't you and Mr. Duke a day or so before that survey go there and try to find that line?

A. Yes, sir.

Q. You both agreed on the lines except the very line in dispute, and that neither of you knew accurately.

A. Yes, sir.

Q. Mr. Duke agreed with you on that day that it was a straight course, did he not?

A. Yes.

Q. Do you know, Mr. Holland, when this crooked line was slipped?

A. No, I do not; it was slipped the first time I went up there, and I never went up there until that 20 rods was cut.

Q. Didn't Mr. Rosenitch tell you that Mr. Duke had told him that this was a straight course?

A. Yes, he told me the day of my survey.

Q. Did Mr. Rosenitch tell you that he wasn't familiar with the boundary?

A. No, he did not; but he did tell me they had gone over it.

Q. You are very familiar with that 20 acre tract of land, are you not, Mr. Holland?

A. Since the timber has been cut I have become familiar with it, but I wasn't familiar with it before, but I had been through it; hunted and walked through it on several occasions; never paid any very special attention other than to admire its timber.

Q. From your knowledge of the timber on that tract of land at that time, 1916, what would you say was a fair price for the same.

R. H. Rawles: Question objected to because it calls for an opinion of the witness.

A. The only answer I could give to that question would be that I would not have sold it for that price had it been mine.

Q. You mean by that that you think it was worth more than that price?

A. It would have been to me, at any rate, in my estimation. I think that I told Mr. Duke when he informed me that he sold it that he sold it too cheap.

Q. Mr. John Dowling and I believe Mr. Rosenitch testified that just at the time of making the survey we just spoke of when the point where the red crooked line leaves the straight line was reached Mr. Duke left. Did Mr. Duke give any reason for leaving?

A. When we reached that point it was after dinner time and we all left.

Q. Then Mr. Duke did not return in the afternoon?

A. He told us on the way out that he had an engagement for the afternoon and didn't expect he would be able to return but would send his soon if he could not come back himself.

Q. Did not Mr. Duke tell you on the day you told him you were going to have the survey made and the day you had arranged to have Mr. Dowling make it that he was sorry you had picked that day because he was going to have to be away in the afternoon?

A. Yes; I am most sure something to that effect, not the exact words, but it applied to the question, was mentioned.

Q. Did not you know just as much about that line as Mr. Duke did?

A. Yes, I knew just as much about it as he did at that time.

Q. You could give just as much information to the surveyor as he could?

A. Yes.

Q. In other words, you both knew it was supposed to be a straight course and that is all either of you knew?

A. Yes.

Cross examined by R. H. Rawles:

Q. Mr. Holland, you noticed before you had this survey made that a slided line, or a line of slided trees, had been made over on what you considered your land.

A. Yes, sir.

Q. And that is the real reason why you wanted the survey made - to determine just exactly where the line was?

A. Yes.

Q. You noticed also that wood had been cut up to the lined line, and in fact a little beyond it, had you not?

A. Yes, sir.

Q. You considered it, then, important to settle this controversy once for all; that this line should be run by a surveyor, did you not?

A. Yes, sir.

Q. And that is the reason why you had it done?

A. Yes.

Q. You notified all the adjoining land owners to be present?

A. Yes.

Q. You began that survey of that line between Mr. Duke at the Northeast corner of the 20 acre tract, did you not?

A. We began at the County Road at the Northeast corner of the 20 acre tract and come down.

Q. After you left that corner, how far down that straight line would you be before the timber line arrived when you all left?

A. We arrived at the big stooping pine at the intersection of the crooked red line.

Q. Then you had reached about the point where the crooked red line began?

A. Yes.

Q. Mr. Duke did not come back any more after dinner on that day?

A. No.

Q. So he was not with you at any time when you surveyed from where the crooked line began to the tree on the South east corner of the 20 acre tract?

A. No, he was not with us.

Q. If that is true, then he was not with you at any time while you were surveying the real boundary that was in controversy?

A. No.

Q. Mr. Holland, do you not consider it important when there is a controversy between neighbors in order to determine an exact line that the parties in interest should be present to point out and protect their interest?

A. Yes.

Q. That was the very object of the survey, was it not?

A. Yes.

Q. Would you have left at the very point where you thought they had come over your line; that is, when they deviated from the true line, and gone about some other business and let the other people settle the controversy?

A. Not unless it was going satisfactorily.

Q. But I understand you to say when you reached this point on the red line you had come to the very point on the red line where arose the controversy between you and Rosenitch.

A. Yes, practically so.

Q. Mr. Duke claimed, as well as yourself, that the entire line between you and himself was a straight line.

A. Yes, sir.

Q. As a matter of fact, that alleged line was not a straight line, was it?

A. Yes.

Q. Then it was important that you should be present to show that this had been done.

A. Yes, it was important to do.

Q. And that was because you were the owner of the land on one side?

A. Yes.

Q. Was it not equally important to the man on the other side to settle the exact line?

A. I should judge it was equally important to the man who had the land.

Q. Wasn't it equally important to the man who claimed the land to be there?

A. I should leave that to his own opinion about that. If it was disputed by me, I should be there.

Re-examined by John M. Hutton:

Q. Under the circumstances that you knew to exist in this case, would you say that Mr. Duke was false to any duty or obligation that he might owe because he did not return that afternoon?

R. H. Reule: This question is objected to because it calls for an opinion of the witness on the subject on which he has no right to express his opinion. The Court itself must determine there.

John F. Hutton: Counsel for the defendant here states that if there is merit in the objection made by counsel for the plaintiff, the same objection would surely apply to most all of the questions that he has just asked the witness. The question just asked by counsel for the defendant is made necessary on account of the question just pronounced by the plaintiff's counsel.

A. No, I shouldn't think so. I didn't blame him at the time at all.

Q. Did not Mr. Duke state to you that Mr. Rosenitch had slipped over on the true course and he had told him so?

R. H. Hawley: Question objected to on the ground that any conversation between Mr. Duke and Mr. Holland is not pertinent.

A. Yes, the day he and I went up there.

R. H. Hawley: Counsel for the plaintiff moves to strike out the answer because it is hearsay.

Q. Was it not simply a question of running a straight line between two points by the compass?

A. Yes, it certainly was; that was the object in view by both sides.

Q. Under the circumstances of this case could Mr. Duke have done any good on earth by being present?

A. None whatever.

Q. Could he have rendered any service to Mr. Rosenitch by being present?

A. Not a bit.

Q. All hands agreed that the true line was a straight course, did they not?

A. Yes, sir.

Re-cross examined by R. H. Hawley:

Q. Could you then have rendered any service by being present if all the surveyor had to do was to run a straight line from one point to the other?

A. No, it was not necessary that I should be present.

Q. But you were present, were you not?

A. Yes, sir.

Q. And you thought enough of your interest and the interest of your neighbors to make it your business to be present; did you not?

A. Yes, because the whole survey was my business.

And further this deponent saith not.

Mr. C. E. Duke, being duly sworn, deposes as follows:

By John W. Hutton:

Q. State your name, age, residence and occupation.

A. Name, C. E. Duke; legal age; residence, Wansboro County; occupation, farmer.

Q. Mr. Duke, you are the defendant in this case, are you not?

A. Yes.

Q. It is claimed on the part of the plaintiff that you sold to them through their agent, Mr. Rosenitch, a tract of timber supposed to contain thirty acres, more or less, but which was shown upon survey to contain 20.1 acres. Please state the circumstances surrounding the sale of this timber to the Petersburg Excelsior Mills, Incorporated.

R. H. Rawles: Counsel for plaintiff
objects to the question
and any answer that may
be made thereto insofar
that as it will not add
to or in any manner
vary from the written
contract which is the
deed itself.

A. The first one sent to me was a colored man send, but I do not recall his name. He wanted to buy my lumber and I told him that I was not anxious to sell, but would sell the certain piece of lumber over the bottom. This bottom made a line. He wanted me to show him the line and I didn't have the chance and couldn't go myself and I send my son and he came back and offered me \$500.00 for the standing pine lumber on this certain piece of land, and I didn't make any deal with him at all. I decided not to sell at that time. I think that was in the month of January, 1916, the best my memory serves me, I don't know. I remarked that I did not care to make the deal with the darky and I did not sell to him. Mr. Rosenitch, he came to me I reckon in March; I think it was March or April one; my memory don't serve me; and wanted to buy this lumber by the cord and I told him that I would not sell it by the cord, that I would only sell it by the lot, the certain parcel that was named in the deed. So he walked over and he wanted me to show him the lumber and the lines. I was not very well acquainted with the lines myself, as I had been away in Suffolk for three years. The forest, it was very thick piece of woods; I showed him all standing lines as given as boundaries in deed, or the important ones, I suppose, and he said he would see Mr. Quentin and would let me hear from him in short. And I think, I don't know what time, I reckon it was in April, he came over and told me Mr. Quentin had been down and he had shown him the lumber and he said he would take it and to meet a certain day in Judge Rawles' office to make the deed. I don't remember,

but I think it was in the latter part of April or the first of May. After the deed was made, Mr. Rosenitch came over to me and told me that Mr. Quantin had decided that it was too much money and I told him that it was immaterial with me; just return my deed and it would be all right. I didn't hunt the sale at all. Mr. Rosenitch came to me and I didn't go to him. Then sometime later in May I don't know how much, a week or so, Mr. Rosenitch came back and told me to come down to Judge Rawles' office that my check was there and that he should proceed in cutting the lumber, and I did so. Mr. Rosenitch went on to cutting the lumber and I think it was June, sometime in June, Mr. Rosenitch came to me and wanted me to go and show him the line again, and I went up with Mr. Rosenitch and showed him the same lines that I had shown him before the purchase. On the side next to Mr. Holland (witness indicates to point marked No. 4 on map) the adjoining side next to Mr. Holland at the dead stump I suppose to five hundred yards there was no chop from this stump (from dead stump on map marked "Exhibit A" to the green pine marked No. 3) Mr. Rosenitch carried his hatchet with him. I left Mr. Rosenitch at the dead stump marked No. 4 on the map. I goes to the pine marked No. 3 on the map, then I would holler so that he could get the course - it was a straight line - and for him to answer me. Mr. Rosenitch would holler once in a while; I continued hollerins. I found that he was bearing away off of the course and I told him that he was away off on Mr. Holland; that he was wrong; that he should not slip over the line. He was slipping as he came. He said that would not make any difference as he was doing that to hold his men over. The next day Mr. Holland comes to me and tells me that Mr. Rosenitch was going away off the line; had cut twenty pines. It was so far from this line that I did not see the tops of the trees. At this time Mr. Rosenitch had not cut down here to the line between this dead stump here to the true line. About those two dead pine stumps, that Mr. Rosenitch speaks of, this was found looking for a crooked pine as a line that John Holmes told me of, and Mr. Rosenitch himself did the cutting in those and decided it was a line. I told him I thought not, this should be a straight line. There was nothing definite about it being chopped, as for the slipping, Mr. Rosenitch did it himself entirely to the dead stump. I never carried an axe or a hatchet the time I went with Mr. Rosenitch.

R. H. Rawles: Counsel for plaintiff objects to the foregoing answer and moves to strike out the same on the ground that the deed itself is the best evidence of the contract, and the only evidence of the contract. There is nothing that was said before the deed was entered into is competent testimony, the entire contract having been applied in the deed at the time it was executed and delivered.

Q. I understand you to say, Mr. Luba, that you stood at the point on the map marked 3 during the entire time the crooked line was being slipped by Mr. Rosenitch.

A. I did.

Q. Do you mean to say that you did not slip a single one of these trees in the crooked line?

A. No, sir, I had nothing to slip them with.

Q. Was the day you and Mr. Rosenitch found the two dead pine stumps the same day on which this crooked line was slipped?

A. No, sir, it was some time after that.

Q. Had the sale been made when you found the two dead pine stumps?

A. No, sir, that was before the sale.

Q. Had the sale been made when the crooked line was slipped?

A. Yes, sir, and a good bit of the lumber cut.

Q. Did I understand you to say that all the lumber cut up to the time this line was slipped was cut between the slipped line and the true line?

A. He commenced cutting near the Northwest corner of the 20 acre tract and came on down here, witness indicating on the map until he had gotten near the straight line between Mr. Holland and myself, and he also cut the 20 paps over the red crooked line.

Q. Mr. Rosenitch testified this morning that you and he together slipped the crooked red line.

A. No, sir. I was not with Mr. Rosenitch when the line was slipped or any slipping was done with the exception of the slipping of the two dead pine stumps which I have mentioned.

Q. Mr. Rosenitch also testified that the day those two dead stumps were found was the same day on which this crooked line was slipped. Is that true?

A. No, sir, those dead stumps were found before the purchase of the timber when we were first in there trying to locate the line.

Q. Then the crooked line was slipped after the purchase of the timber?

A. Yes, sir.

Q. State whether or not you told Mr. Rosenitch everything you knew about the boundary line between you and Mr. Holland?

A. Yes, sir, I told him it was a straight line between Mr. Holland and myself. I showed him all the line trees.

Q. Were the line trees you showed him right?

A. The contract line trees proved to be by the survey, yes, sir.

Q. As I do understand that he knew as well as you that between the point marked 4 on the map and the crooked line there was nothing known except that it was a straight line?

A. Yes, sir.

Q. Right much has been said in the testimony thus far about the fact that you left when Mr. Holland's survey was being made right at the point where the disputed line began. Please state why you left.

A. I had an engagement for that afternoon was why I left, and the fellow that was looking out for some of my property would be down there on Wednesday of that week. Mr. Holland was in town and made his arrangements with Mr. Cowling to make that survey, that Mr. Cowling would be there. I told him that I was very sorry that it was that day as I had other engagements for that day but would be with them if possible. I told my family if the parties should come to ring the bell for me. They did not come until the afternoon, and I sent my son in my place.

Q. State whether or not you looked over the line the day before with Mr. Holland.

A. Several days before with Mr. Holland, a week or so. Then I carried my axe with me. In trimming out with Mr. Holland I found a blipped up line. Between the day the line was blipped and the day I went there with Mr. Holland they had cut along the true line and were then cutting on Holland's side, that prevented Mr. Holland and myself from getting the course.

Q. Did you ever have any conversation with Mr. Rosenitch about the acreage in that tract of timber?

R. H. Revles: Counsel for plaintiff objects to the above question because the deed itself embraces the acreage and that is the best evidence, and asks that any answer that may be given to the above question may be stricken out.

A. No, sir, not about the acreage.

Q. Mr. Rosenitch has testified that you did have conversation and that you told him there were between thirty and forty acres in that tract. Is that true?

A. No, sir.

Q. When was the first time acreage was mentioned?

A. The Judge asked me about the acreage when he made the deed?

Q. How many acres did you think was in that land?

A. Well, I bought it for 56-2/3 acres and have paid tax on it for over thirty years for that. As for the survey, I couldn't tell when it was surveyed. I bought it in 1893, and I am confident that piece was fully half or over of the entire tract.

Q. Did I understand you to testify that you showed Mr. Rosenitch around the boundary lines two or three weeks before the sale was consummated?

A. Yes, sir.

Q. Was Mr. Rosenitch familiar with that piece of timber?

A. Well, he told me he knew where the lines were. There was one line that Mr. Rosenitch showed me himself. He showed me the corner pins (southeast corner on the map). I found when I went up there that Mr. Rosenitch was most as familiar with the lines as I was. I had been away from there for three years.

Q. Did you understand that you were selling him thirty acres of timber more or less, or that you were selling him a lot of timber regardless of the acreage?

R. H. Rawles: Question objected to by plaintiff's counsel on the ground that the deed itself is the best evidence of the understanding and agreement.

A. I understood that I was selling him just a certain lot of timber; no acreage at all, at the time I sold the timber.

Q. The bill filed in this cause states that you falsely and fraudulently represented the quantity of timber sold for the especial purpose of effecting the sale and wilfully and deliberately deceived the plaintiff as to the quantity of timber it was buying. Is that true?

A. No, sir; I certainly did not. I did not urge the sale of it; I was not anxious to sell. Mr. Rosenitch bought this with his eyes wide open. I did not urge him to buy it.

Cross-examination by R. H. Rawles:

Q. I understand you to say that you told these people when they first approached you to buy the timber on your land that you would sell them the timber over the bottom of this tract. Is that true?

A. Yes, sir.

Q. When this was a tract of land that lay very low and was considered a bottom.

A. No, this was a bottom running through and dividing it.

Q. I understood you to say that when they first approached you they desired to buy the wood by the cord but that you refused to sell it by the cord. Is that true?

A. Yes, sir.

Q. Did you think that you would get a better bargain out of it or a better price out of it by the cord?

A. We skinned the bark from the wood cut; five feet long takes six pence to the cord. I did not propose to get two cords for one.

Q. That would depend altogether on the price they paid per cord, would it not?

A. Yes, sir. I suppose it would, but their cord is not like in any other case.

Q. They buy purely what they call an excelsior cord, do they not?

A. I do not know.

Q. At any rate, you sold him all the timber growing on this 20.1 acre tract of land. Is that true?

A. Yes, sir, I sold him all timber in the boundaries given in the deed.

Q. The boundary on the western part of the tract for the greater part of the way consists of an old path, does it not?

A. There is an old path there and some few lines through there.

Q. At any rate, you had no difficulty whatever in locating and fixing the boundary line on the Western side of this tract?

A. Haven't had any yet, except to get over the line of Mr. Murphy.

Q. You know exactly where your line is on the Western side of this tract, do you not?

A. Yes, sir.

Q. Well, you sold by certain lines, did you not?

A. Yes, sir, I certainly did.

Q. Then you must have known where those lines were?

A. Yes, sir, I did show him the lines.

Q. Then you had no difficulty in locating the line on the Western side of the tract from the corner stump of Ed. Murphy on the Southwestern part of the tract to the corner stump at the beginning on the Northwestern corner of the tract?

A. We found the line, still he cut over it.

Q. Did you have any difficulty in locating the line on the Southern part of this tract from the corner of Ed. Murphy to the James Woodward tract?

A. No, that was right down John Palmer's fence.

Q. Did you find any difficulty in locating the line on the Northern part of this tract which runs from the corner pine at the Northwestern part of the tract to the corner pine at the Northeastern part of the tract?

A. No, sir, this was not but a short distance across here. This was the bottom and the bottom was the line.

Q. That was also a straight line, was it not?

A. Yes, sir.

Q. Now, when you cut on the Eastern side of this 20 acre tract you own, the side next to Mr. Holland, that is where the real difficulty began, is it not?

A. Yes, sir.

Q. I understood you to say that the line between you and Holland began at the corner pine at the Northeast corner of the 20 acre tract and ended at the corner pine at the Northeast part of the 20 acre tract and is a straight line.

A. Yes, sir.

Q. When you began on this line at the corner pine at the Southeast corner of the tract, you had no difficulty going northward until you left the dead pine marked No. 4 on the map?

A. No, sir.

Q. Then I understand you to say you left Mr. Rosenitch standing

at the dead pine marked No. 4 on the map and you went Northward to the pine marked No. 3 on the map; that you hollered back to him so that he might get the course.

A. Yes.

Q. Well, you were the man selling the timber, were you not?

A. Yes, sir.

Q. Was it not your duty, then, to find and fix this line from No. 4 to No. 3 on the map?

A. He could easily have seen one of these lines if he had come down gradually from No. 3 to No. 4.

Q. You have testified, I believe, that the woods and forest were thick in there at the time; was that true?

A. Yes, it was of that standing timber.

Q. About what was the distance so far as you can guess from No. 4 on the map to No. 3?

A. I would judge it was something between four hundred and five hundred yards. That would be my judgment.

Q. Could a person standing at No. 4 see a man standing at No. 3?

A. Not a man, but he could have seen a tree.

Q. Did I understand you to say that you hollered when standing at No. 3 to Mr. Rosenitch, who was standing at No. 4?

A. Yes.

Q. You say that you knew that he had veered or gotten off of the line on Mr. Holland's land. How could you tell that?

A. I could tell that by my hollering and his answering me.

Q. You say he had a hatchet?

A. Yes, sir.

Q. You say that he slipped all the trees that you indicated by your slipped line?

A. Yes, sir.

Q. He was expected, then, to do the slipping, was he?

A. Well, of course, I don't know whether he was expected to do the slipping, but I wanted him to get the course to show him where the line was, but the way I understood, he was slipping so as to get in the 20 pens of wood, so as to get them in, but he did not get them. I think that was his object.

Q. What good would it have done him to have gotten the course unless he had chopped or slipped. You would not be there at No. 3 every day while he was cutting to holler for him, would you?

A. No, sir, it would have been all right for him to have marked it if he had marked it correctly.

Q. Did you see any of the trees which he slipped along the red line?

A. When he got near enough to me to talk to him I told him he was too far off. He said never mind, he was doing that to hold his cutters off.

Q. Did you then tell him to slip trees on what you now say is the true line?

A. Yes, sir, to go back and come down on this true line.

Q. Did you insist upon his going back and coming down the true line?

A. Yes, sir.

Q. Did he go back and come over the true line?

A. He went back and started again and still went over the true line.

Q. Mr. Rosenitch says that you slipped some of those trees and he slipped some; that you bushed the way.

A. All the bushing of the way I did with Mr. Holland when he and I were together after the cutting was done. I found in this cutting another line which was the blowed-up line; the chops were on it which proved to be a line by the survey.

Q. When you and Mr. Rosenitch left the woods that day when the line was slipped, which now turns out to be the red line on the map, you knew that the only slipped line was the one now indicated by the red mark on the map. Is that true?

A. Yes, I knew that was the only line that was slipped. I told him that was not the right line, but he said he was doing that to hold his men back.

Q. Then, if he did not slip or make what you consider the true straight line from No. 4 to No. 3 on the map, why did you not do it?

A. Because he said he was doing this to hold his men back and was going to get the straight course from No. 4 to No. 3.

Q. So you let it go, then, at what he said without attempting yourself to slip or mark any line between No. 4 to No. 3?

A. I had no right to mark any line there across the lines that were already there.

Q. You had a right to slip trees without actually marking them.

A. Yes, of course, I did have a right. Mr. Rosenitch taken the right.

Q. Then if Mr. Rosenitch slipped the wrong line or the false line and you knew it was false, why did you not slip the true line?

A. Well, it was getting late, and I did not have time to do it just at that time. Mr. Rosenitch said he was doing this to hold his men back and would go back and cut the right line.

Q. So when you went out of the woods on that occasion you knew that the line which he had slipped was not the true line?

A. I did not consider that any line at all.

Q. And yet with this knowledge on your part you did not attempt either that day or the next or any time since to show him where the true line was.

A. I showed him where all the true lines were; the lines that were standing; I could not show him the ones that were not there, could I?

Q. I understood you to say in this testimony that no lines of any line were chopped or slipped until after you had sold the timber or made the bargain.

A. Mr. Rosenitch set or stuck a stick in the corner pine stump marked the beginning on the map.

Q. Was that the only line that was chopped, slipped or marked before you sold the timber?

A. Well, I don't remember. Mr. Rosenitch might have slipped some of those line-trees to show him the true lines. I don't remember. The chops on the trees were very plain.

Q. What trees do you mean?

A. The line trees that I showed him.

Q. Point out on the map the line trees that you showed Mr. Rosenitch before the purchase.

A. (Witness indicates on map) I showed him the eye at the Northwest corner of the tract marked beginning pine stump; I then showed him the green pine on the Northeast corner of this tract; I then showed him pine marked No. 3 on the map; I showed him dead pine marked No. 4 on the map. Mr. Rosenitch found the corner pine on the Southeast corner of the tract. I showed him the corner pine on the Southwest corner of the 20 acre tract; I showed him another pine on the Western side of this tract; I showed him also a line stump which is not shown on the map; I showed him two oaks marked on the map and I showed him the beginning corner pine.

Q. I understood you to say that you bought the entire tract for 58-2/3 acres.

A. Yes, sir.

Q. I also understood you to say that you are confident that the part you sold Mr. Rosenitch or the plaintiff was at least one-half of the tract.

A. Yes, sir.

Q. Then you intended to sell him according to that estimate between twenty-six and thirty acres.

A. Somewhere around thirty acres, more or less. I did not sell it by the acre.

Q. You say in the deed that the tract contains thirty acres, more or less. You believed the statement in the deed was true, did you not?

A. Judge, I did not think I sold it by the acre, I sold it by the lot; I did not know there was anything to be said about the acreage until the deed was made.

X
Q. But before you signed the deed you knew the deed deed 30 acres more or less, did you not?

A. Yes.

Q. You really thought, then, that the statement in the deed was correct, did you not?

A. Well, I thought if the old original deed was right then, it was around that.

Q. You would not have put the words "30 acres more or less" in the deed unless you believed that statement was true, would you?

A. I did not know about the acreage any way. I did not think it was necessary.

Q. But what I asked you was when you did use those words in your deed "30 acres more or less" which you knew were not there when you signed it, you thought that was true, did you not?

A. Yes, somewhere in the neighborhood of 30 acres.

Q. You would not have deliberately put a misstatement in this deed, would you?

A. No.

Q. Then if you believed when the deed called for 30 acres that it was 30 acres, is it not fair to assume that Mr. Rosenitch also believed that?

A. Yes, I suppose so.

Q. You claim, however, now that you did not sell by the acre.

A. No, sir, I did not; I sold by the lot - so much for the lot.

Q. You would not sell anything for 30 acres if you knew that it contained less than 30, would you Mr. Duke?

A. No, sir, I would not.

Q. You would not sell a basket of eggs for four dozen if you knew the basket did not contain by three?

A. No, sir, I would not.

Re-examined by John E. Hutton:

Q. Are the boundaries given in the deed just referred to the correct boundaries, Mr. Duke?

A. Yes, sir, the correct boundaries.

Q. Are they the very same boundaries that you showed Mr. Rosenitch before the sale was consummated?

A. Yes, sir, the very same.

Q. Did I understand you to say a moment ago that when you found that Mr. Rosenitch was over the course while slipping

the crooked line you called his attention to it and he went back and started again and still veered?

A. Yes, sir, from the true line on the same side.

Q. Was that the same day?

A. The same day.

Q. Well, then, there were two slipped lines.

A. Yes, sir, he slipped another line nearer to the correct line when he went around back, but I told him he was too far over them, and he said he couldn't follow the line. I told Mr. Rosenitch in June, the best my memory serves me, that I could not show him anything more than I had already shown him, but he insisted upon my going, so I met him at two o'clock - he appointed his time for me to meet him at two o'clock - that was the only plan that we could see to get a straight course, by my getting to one line and he to the other to get the course.

Q. When he went back and started the second time, were you still in the same place hollering to him?

A. Yes, sir, in the same place.

Q. How far do you think he got on the second time?

A. I expect he got some two hundred yards from where he started. He did not get through with either line.

Q. Why did he stop on the second line?

A. Because I called him off and told him he was too far over still.

Q. What did Mr. Rosenitch mean by saying that he was slipping that line to hold his men over?

A. I don't know. I did not understand him; I don't know what he meant; I thought he meant to keep them from getting over the line between the dead tree where he was at and the green tree where I was at.

Q. When was demand first made on you to put up any money on account of shortage of acreage?

A. It was the coming fall, 1916.

Q. At that time had all the wood been cut off the tract or sold then?

A. Yes, sir, he had cut off and pretty well moved it out.

Re-cross examination by R. H. Rowles:

Q. At that time, that is in the fall of 1916, when he first made the demand on you, no survey had been made of the 20 pere tract of land, had there?

A. No.

Q. Then so far as you know, he did make a demand on you just as soon as the survey was made and he discovered that there was a shortage in the 30 acres; is that true?

A. Yes, it was after the survey was made.

and further this deponent saith not.
Mr. Rosenitch recalled.

By John W. Hilton:

Q. How long have you been the purchasing agent for the ex-
clusive people?

A. Over four years.

Q. You bought several tracts of timber for them?

A. Yes, sir.

Q. You are an experienced timber man, are you not?

A. Yes.

Q. Did you go through that timber after you were shown the
boundary lines?

A. No, sir, I never have though it. I estimated that there
was 250 cords.

Re-examined by R. H. Rawles:

Q. Mr. Rosenitch, in your first examination you stated in an-
swer to the question which I asked you as to whether Mr.
Jule told you that all the timber lay on the East side of
this red line and you answered yes. Was that a slip of
the tongue or did you mean all on the East side?

A. I meant on the west side; that was a slip of the tongue.
The map shows that Mr. Colson owns all on the East.

Re-cross examined by John W. Hilton:

Q. How many cords did you get off that piece of land?

A. I can not tell.

Q. Didn't you state to Mr. Lake that you cut something over
three hundred cords?

A. No, sir, I did not know how much we cut; I can not tell.

Q. Didn't you count the number of cords you cut?

A. No, sir, I had nothing to do with the counting.

And further this deponent saith not.

Second Depositions

IN THE CIRCUIT COURT OF THE COUNTY OF HANCOCK.

Petersburg Excelsior Mills,)

Incorporated, Plaintiff,)

Vs.)

C. E. Duke, Defendant.)

IN CHANCERY

This cause came on this day to be heard on the bill of the complainant and the exhibits filed therewith; the answer of the defendant; and the depositions of witnesses taken after due notice; and was argued by counsel.

On consideration whereof, the court doth order, adjudge and decree that the plaintiff recover of the defendant the sum of \$52.50 with interest thereon from the 16th day of June, 1917, with his cost in this behalf expended; that a judgment for said sum and cost be docketed by the Clerk of this court on the common law side thereof in the Judgment Docket Book of the Circuit Court of Hancock County.

It appearing that nothing further remains to be done in this cause, it is ordered that the same be removed from the docket.

Final Decree

Enter March 10, 1919.

Jas. L. M. Brown

I have seen this decree.

John Hutton

Chancery Office

Book No. 5

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IN THE CIRCUIT COURT OF MANSEMOND COUNTY, VIRGINIA.

Petersburg Excelsior Mills, Incorporated.....Plaintiff

v.

ANSWER

C. E. Duke.....Defendant.

The answer of C. E. Duke to a bill of complaint filed against him in the Circuit Court of Mansemond County by Petersburg Excelsior Mills, Incorporated.

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

That it is true, as is stated in the bill, that your respondent executed a deed dated May 12, 1916, conveying all the timber of certain dimensions located on a certain tract of land in Holy Neck Magisterial District; the said tract of land being fully described in the deed of conveyance filed with these papers by the plaintiff, marked "EXHIBIT A"; that it is true, as set out in the bill, that the land is described in said deed of conveyance as containing about thirty (30) acres, more or less; that it is true that the said plaintiff gave the said defendant the sum of FIVE HUNDRED (\$500.00) DOLLARS for the said timber; that it is true that your respondent believed that the land described in the said deed of conveyance did contain about thirty (30) acres and that your respondent had good reason to believe that it contained about thirty (30) acres.

Your respondent further represents to the court, however, that it is not true, as is stated in the bill, that your respondent fraudulently represented to the plaintiff that the land contained thirty (30) acres, that it is not true that your respondent guaranteed to the plaintiff, either by knowledge of the facts or by mistake, that the said land contained thirty (30) acres, but rather that your respondent represented to the plaintiff that there was, in his opinion, about thirty (30) acres in the tract of land on which the timber was located, and that your respondent, in accordance with that opinion, stated in the deed of conveyance that there was about thirty (30) acres, more or less, in the land on which the said timber was located.

Your respondent here states that he never had the land surveyed; that the acreage set out in the deed of conveyance was merely his rough estimate of the quantity of the land; that he never intended to sell any quantity of land; that he did not sell any quantity of land; that he intended to sell a quantity of timber located within certain described boundaries; that he did sell a quantity of timber located within certain described boundaries; that he pointed out the boundaries of the land to the plaintiff's agents; that he pointed them out truthfully and correctly; that he described said boundaries in the deed of conveyance; that he has never misled the plaintiff or its agents, whether fraudulently or by mistake, as to the boundaries of the said land; that the plaintiff's agent who purchased the said timber from your respondent went through the timber time and time again, knew and was perfectly familiar with the

said timber; that he purchased the said timber after having every opportunity to examine it carefully and make an estimate of the quantity; that the said timber was never sold by the acre but was sold as a certain lot of timber located within certain boundaries.

Your respondent denies emphatically that he slipped a line over on Mr. Holland's land, or was in any way responsible for the plaintiff's conduct in cutting timber on the land of Mr. Holland.

Your respondent further states that the said plaintiff has received full consideration for the purchase money paid your respondent; the said plaintiff having gotten a good bargain in the timber which came into his possession by the said deed of conveyance.

And now having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

C. E. Duke, Respondent.

Launders H. H. H.

Counsel.

Answer.

TO THE HONORABLE JAMES L. MCLEMORE,

JUDGE OF THE CIRCUIT COURT OF HAZLEMOND COUNTY:

Humbly complaining sheweth unto the Court, your orator, the Petersburg Excelsior Mills, Incorporated, a corporation duly chartered and doing business under the laws of the State of Virginia, and of Petersburg, Virginia, the following case:

Your orator says that it is engaged in the business of the manufacture of a product known as "Excelsior" and for that purpose buys standing timber in different parts of this State.

Your orator further says that on the 12th day of May, 1916, it entered into a written contract with Charles E. Duke and Fannie E. Duke, his wife, which is herewith filed, marked Exhibit "A" and prayed to be read as a part of this bill, by the terms of which, for the consideration of five hundred (\$500) dollars, cash in hand paid, the said Charles E. Duke and wife sold unto your orator all the standing timber mentioned below that will measure six (6) inches across the stump with the stump ten (10) inches above the ground, said timber being located on that certain tract of land situated in Holy Neck District, in the County of Nansemond and State of Virginia, containing about thirty (30) acres, more or less, and bounded and described as follows:

"Beginning at a dead stump in a bottom which divides this land from the other land of the said C. E. Duke, and running thence East along a straight line to a green pine standing in the same bottom; and thence running Southerly on the West side of Ed Holland's line to a pine, a corner of this tract, the land of Ed Holland and James Woodward; thence running along the line of said James Woodward and John Holmes to a corner on the land of Ed Murphy; thence running along the line of said Ed Murphy and this

tract of land to the abovementioned stump at the point of beginning; the line around this tract of land being a line which has heretofore been agreed on between the parties aforesaid; and adjoining the other lands of said C. E. Duke, the lands of Ed Murphy, Ed Holland, James Woodward and John Holmes."

Your orator further says that at the time of the purchase it and its agents were entire strangers to the tract of land in question and knew nothing about its area or quantity, but that in making said purchase they were governed entirely as to the quantity by the representation made by the said Charles E. Duke, who represented to them in plain language that the said tract of land contained thirty (30) acres, and your orator further says that relying entirely on the representations made to it by the said Charles E. Duke, it entered into the contract aforesaid, and paid the sum of five hundred (\$500) dollars, for the said timber on said tract of land; that said sum was paid upon an estimate of a given quantity, to-wit: Thirty (30) acres, and that the said represented quantity materially affected the value and influenced your orator in making the purchase and in paying therefor the said sum of five hundred (\$500) dollars, and that your orator would not under any consideration have given the said sum of five hundred (\$500) dollars but for the representations and positive guarantee of the said seller, Charles E. Duke as to the quantity of land the tract contained.

Your orator believes and therefore charges, that the said Charles E. Duke falsely and fraudulently made this representation of quantity for the express purpose of effecting the sale and wilfully and deliberately deceived your orator as to the quantity of land ~~he~~ was buying.

Your orator further says that some time afterwards, and after the wood had been cut from said land your orator had occasion, for the reasons stated below, to have the said tract of land surveyed and upon a survey of the same it turned out that the tract of land from which he purchased this timber contained ~~one~~ twenty and one-tenth ($20\frac{1}{10}$) acres, and was therefore short in quantity to the extent of nine and nine-tenths ($9\frac{9}{10}$) acres, or nearly onethird ($\frac{1}{3}$) of the entire quantity purchased.

Your orator further says that therefore, the said Charles E. Duke has had and received of it a certain amount of the sum of one hundred and sixty-five (\$165) dollars, for which your orator says it has had no value whatever, this being the amount which the nine and nine-tenths ($9\frac{9}{10}$) acres would have amounted to.

Your orator further says that if the deficiency in the said tract of land had been known to them at the time of sale they would not have purchased the same, certainly not for the agreed price of five hundred (\$500) dollars.

Your orator further says that it undertook and ~~and~~ agreed to purchase of the said Charles E. Duke the said standing timber on a tract of land containing thirty (30) acres of land and that the said Charles E. Duke undertook and agreed to sell them said timber on a tract containing thirty (30) acres of land, and represented said tract to contain thirty (30) acres and guaranteed the same to them.

Your orator further says that if the said Charles E. Duke did not wilfully and fraudulently misrepresent the quantity, then he the said Charles E. Duke was mistaken in the quantity as well as your orator, and that the bargain and contract for said timber on said land was made under a mutual mistake, and that in either event your orator is entitled under the law to an abatement in the purchase price

Your orator further says that in pointing out said land to your orator, the said Charles E. Duke either wilfully or deliberately, or under a mistake carried it over on several acres of land belonging to Mrs. Maude Holland; that the said Charles E. Duke not only pointed out the line which took in this Holland tract, but also himself slipped trees so as to indicate the line to which your orator was buying; that the said Maude Holland afterwards sold this land to one J. V. Woodward; that your orator believed that the wood which he had purchased on said tract was really on the land of the said Charles E. Duke and was included in his purchase from said Charles E. Duke and he went upon the land and cut up to the line slipped and indicated by the said Charles E. Duke, having cut thereon one hundred and twenty-nine and one-fourth ($129\frac{1}{4}$) pens ~~from said land~~ of wood; that before your orator could remove the said wood, to-wit: One hundred and twenty-nine and one-fourth ($129\frac{1}{4}$) pens from said land, it was forbidden to do so by J. V. Woodward, who in the meantime had purchased the Maude Holland tract of land, and that the said J. V. Woodward afterwards brought a warrant against your orator to recover the value of said wood, to-wit: Fifty (\$50) dollars; that at a hearing judgment was rendered against your orator for said sum of fifty (\$50) dollars in favor of J. V. Woodward, for said wood, together with one dollar and fifty cents (\$1.50) cost, which said judgment was duly docketed in the Clerk's Office of the Circuit Court of Nansemond County, and which said amount has now been paid in full by your orator, it being necessary to pay said amount before your orator could remove said wood; an abstract of said judgment is herewith filed, marked Exhibit "B" and prayed to be read as a part of this bill. That when said action was brought against your orator by the said J. V. Woodward, your

orator gave due and reasonable notice to the said Charles E. Duke of the same, a copy of which notice is herewith filed and marked Exhibit "C" and prayed to be read as a part of this bill, and required him to appear and protect the interest of your orator, but the said Charles E. Duke refused to appear or to lend any protection whatever to your orator, and thus your orator says that it was compelled to pay fifty-one dollars and fifty cents (\$51.50) to J. V. Woodward for said wood, which had been sold and delivered to him by the said Charles E. Duke, who claimed that it was his wood and was on his land.

Your orator therefore says that the said Charles E. Duke is indebted to him in the sum of one hundred and sixty-five (\$165) dollars for the value of the wood as above set forth and on account of the deficiency in the tract of land aforementioned amounting to nearly one-third ($1/3$) of the same; and is also indebted to him in the sum of fifty-one dollars and fifty cents (\$51.50) on account of having sold unto it property which did not belong at the time to the said Charles E. Duke.

Your orator further says that he has made a demand on the said Charles E. Duke, who refused to pay anything on account of his wrongdoings as above set forth.

IN TENDER CONSIDERATION WHEREOF, And forasmuch as your orator is without remedy in the premises save by the aid of a court of equity where such matters are alone and properly cognizable, your orator prays that the said Charles E. Duke may be made a party defendant to this suit and required to answer this bill, though an answer under oath is hereby waived; that proper process may issue; that all proper depositions may be taken; and that the said Charles E. Duke may be compelled and decreed to pay to your orator the sum of one hun-

Petersburg Excelsior Mills
Inc. by R. H. Canby Counsel.

City of Suffolk, to-wit:

I, Mary V. Andrews, a Notary Public for the city aforesaid in the State of Virginia, whose term of office expires on the 8th day of March, 1919, do certify that D. Scott Quintin, Secretary and Treasurer of the Petersburg Excelsior Mills, Incorporated, whose name is signed to the foregoing bill, has this day personally appeared before me in my city aforesaid, and after being duly sworn made oath that the statements contained in the said bill as coming of his own knowledge are true and that all other statements therein contained as coming from knowledge or information derived from others, he believes to be true.

Given under my hand this 16th day of June, 1917.

Mary V. Anderson,
Notary Public.

See next page
for Ex. 6.

Bill

Del'd June 18, 1917
H. G. D. D. D.
Arch

R. H. RAWLES
ATTORNEY AT LAW
SUFFOLK, VA.

CIRCUIT COURT

SECOND MONDAY IN JANUARY, MAY,
JULY, AND OCTOBER

HON. JAMES L. MCLEMORE, JUDGE
GEO. E. BUNTING, CLERK
S. E. EVERETT, COMMONWEALTHS' ATTORNEY
E. E. WAGNER, SHERIFF
C. R. FULGHAM, COUNTY TREASURER
LEE BRITT, COMMISSIONER OF ACCOUNTS

Nansemond County Clerk's Office

SUFFOLK, VA.,

Rule Notes:

Petersburg Excelsior Mills, Inc.

V. In Chancery.

C.E. Duke.

June 12, 1917; process issued, returnable to June Rules, Third Monday, 1917.

*Bill filed & decree nisi.
Decree nisi confirmed & cause set for trial*

Wash
Bridg
Ship
Cry-
lills

1.50
1.50
1.00
1.50
9.50

\$37.28

R. M. Adams, Jr.

Petersburg Excursion ^{3.} mile

G. E. Drake

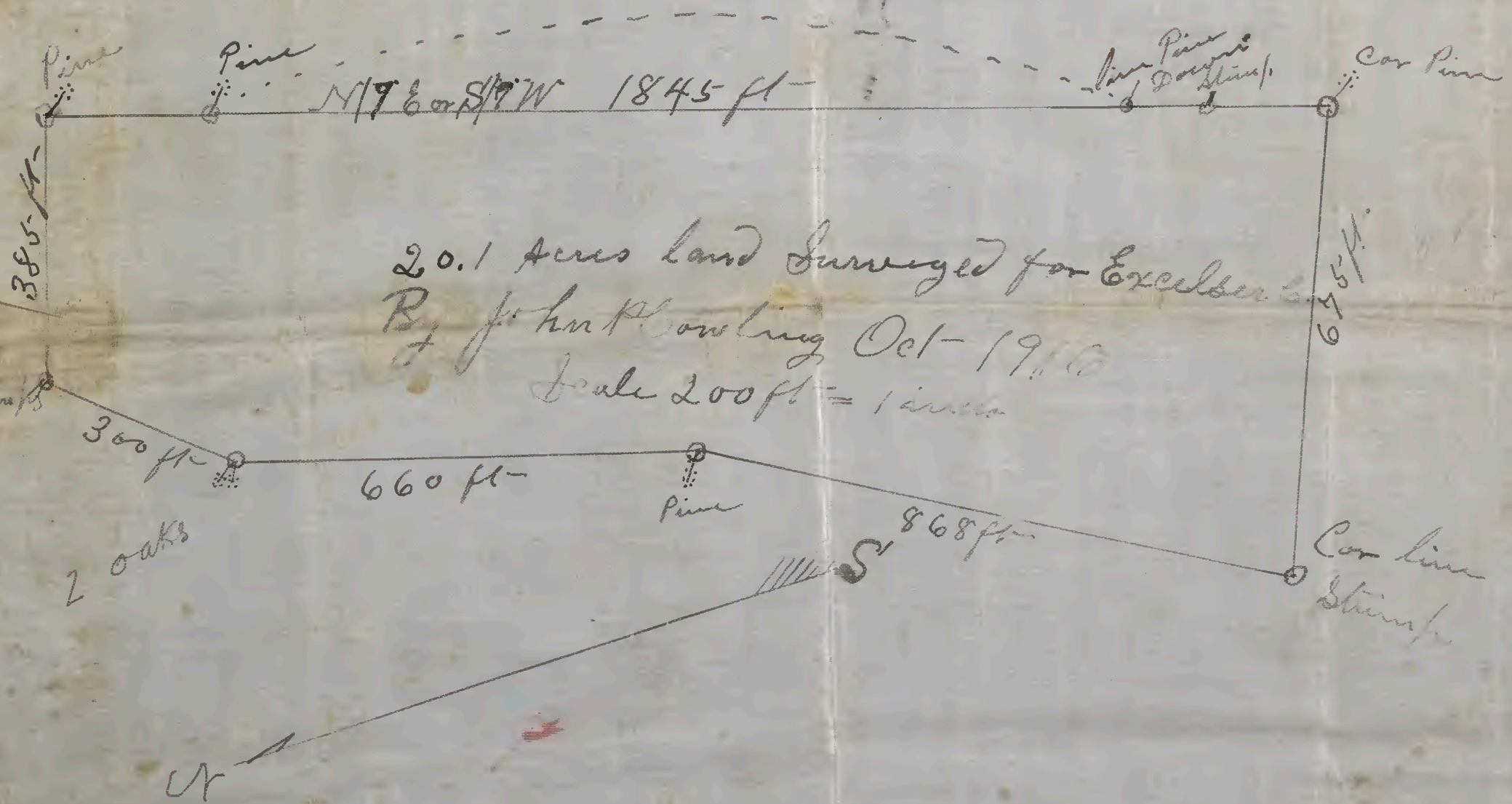
Final survey cut and

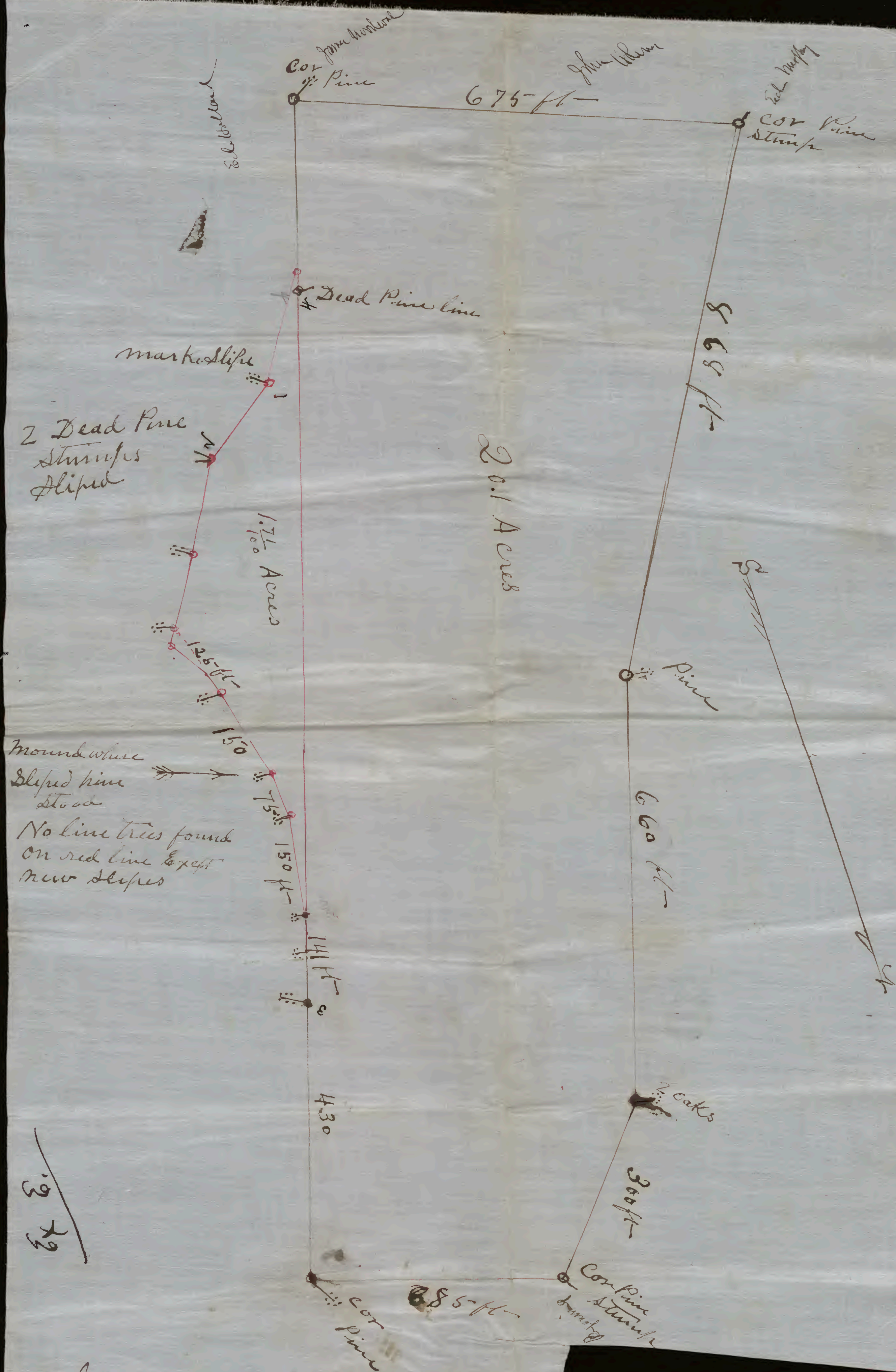
March 10th, 1917



Ex J

Hollands Land





5.3 x 2.9