

ALLEN VS STRIBBLING

The plts E.M. Allen and John T. Butler and Bettie his wife state that when the suit was instituted they had no knowledge that he had executed a will and believed that he had died () that his will which is filed here with having been subsuted to record that they have no individual () in the subject of controversy and pray () filed suit to () to them.

T. B. Bartow
Attorney for

On the application of Richard Allen security for John F Butler in his bond as guardian of Dorsey M Allen the court with ordence that the said John F Butler be summoned to appear here on the first day of the next term to show cause if any he can why he should not give a new bond with other and additional security as guardian as aforsaid.

On the application of Richard Allen security for E.B. Allen in his bond as admin. of Jeremiah Allen decs. The court with ordence that the said E.B. Allen be summoned to appear here on the first day of the next term to show cause if any he can why he should not give a new bond with other and additional security as admin. for the aforsaid.

E. B. Allen admin
and others In chancery.

v

Geo H. Stribbling

To the honorable John C() Judge of the circuit court of Spotsylvania County
VA.

Your orators Edwin B. Allen as administrator of Jeremiah Allen deceased and in his own right, Dorsey M. Allen an infant by the said Edwin B. Allen his next friend, John F. Butler and Elizabeth C. Butler his wife, respectfully represent that Jeremiah Allen the father of your orators E.B. and Dorsey M. Allen and of your orator Elizabeth C. Butler died intestate in the month of August 1865. That of the date of his death he was () of a small amount of personalty, and three lots in the city of Fredericksburg, upon each of which lots there is a dwelling house that each of these houses was seriously impaired by the bombardment of Fredericksburg in the month of December 1862, and continued in this dismantled condition until the month of June 1865. That the said Jeremiah Allen was of the date of his death about sixty years of age. That for many years he had been infirm in health and hysterical and hypochondriacal in temperament. That for eight years past he had been entirely blind and that during a large portion of said time to wit ever since the bombardment of Fredericksburg to which he was exposed his mind and memory were so impaired and imbecile as to render him most whimsical, childish and improvident, and entirely incapacitate him for the management of his affairs or the transactions of any business whatever. That the termination of the war found him in his hopeless and distressed condition of mind and saving the property mentioned above, utterly impoverished and (necessitous), and dependent upon public and private charity for the () support of himself, and his infant son Dorsey who was the sole staff of his age and infirmities and guide of his blindness. During the in his infirmities.

Your Orators further represent that the three lots above referred to as owned by the said Jeremiah Allen were situated on Main Street in the city of Fredericksburg, in a desirable portion of the city, and that the three dwelling houses on said lots, two of them consisting of four or five rooms each and the third containing eight rooms, though much impaired by the bombardment aforesaid were all then capable of being placed in tenantable repair without large outlay and might in the hands of other than their unfortunate owner () have been made the source of considerable income, dwelling houses being much in demand in the city and rents high.

Your Orators further represent that the said Jeremiah Allen, being in the state of () and () above described, which rendered him liable to be () by the artful and designing, and terrified by the strong, was approached about the first of June 1865 by one George H. Stribbling the half brother of the said Allens wife to whose captivity he was destined to fall prey, that the said Stribbling possessed and exercised great and fateful influence over the said Jeremiah Allen, and with deceitful assurances of friendly interest did

induce him unaided by the counsel and advice of any friend, and in secret, to unite with said Stribbling in certain articles of agreement (marked Exhibit A and prayed to be taken as part of this bill) by which agreement, which is vague and uncertain in its terms, it is alleged by the said Stribbling the said Allen agreed to lease to him one of the aforesaid tenements with half of the entire lot upon which the three tenements were situated for four years from the date thereof, for and in consideration of the labor and skill of said Stribbling() ().

Your Orators farther represent that they are informed and believe that the property claimed for four years by said Stribbling was when placed in its present state of repair worth and would readily have brought and would continue to bring at least \$12 per month or \$600 for the four years for which the contract of lease was made, and that the value of the skill and labor which said Stribbling agreed to put upon the two houses if he had faithfully preformed the contract would not have exceeded \$200.

Your Orators are advised that in view of the manifest () and consequent improvidence of the said Jeremiah Allen coupled with the gross inadequacy of consideration alleged for the articles of agreement above referred to the contract of lease to the said Stribbling of a portion of the property of said Allen is void and of no effect in a court of equity and your Orators pray that it may be so regarded and pronounced by your Honor.

Your Orators further charge that the said George H. Stribbling well knew the mental weakness improvidence and () embarrassment and distress of said Jeremiah Allen, and he well knew that there was a great and unconscientiable inequality between the value of the property he rented and the consideration he paid for it.

Your Orators further charge that the overreaching rapacity and imposition of said Stribbling was further made manifest in that a greater portion of his skill and labor was expended on the property he had rented and that upon the () () by said Allen executed in a most miserable and unworkmanlike.....(last line of page cut off) ...Allen in the month of August 1865 the said George H. Stribbling appropriated to his own use all of the goods and chattels of said Allen consisting of a bed, bedstead, bed clothes, table some chairs and some cooking utensils and has not accounted with any of the representatives or heirs of said Allen in reference to the said chattels.

Your Orators further charge that the said George H. Stribbling sold and converted to his own use the proceeds of a portion of the timber supplied by said Allen to be expended in repairs of the two houses referred to in the aforesaid articles of agreement instead of using the timber as required by his said contract.

Your Orators () pray that on grounds of fraud as well as of improvidence and inequality this contract may be rescinded and that upon the said Stribbling's being reimbursed for his skill and labor expended by him upon the property of said Allen he may be compelled

to release all claim and title to the property of said Jeremiah Allen. And they further pray that the said G.H. Stribbling be required to discover what goods and chattels belonging to the said Jeremiah Allen have at any time come to his possessions and what portion of the timber or lumber of said Allen has at any time been sold by him or in any manner disposed of save in the repair of aforesaid houses and that he be made to account before a commissioner of court for the () () of said property converted to his own(bottom of page cut off).....

Agreement made and entered into this first day of June 1865, between Jeremiah Allen of the town of Fredericksburg and George H. Stribbling. The said Allen agrees to leave to the said Stribbling one half of his lot and tenements situated on Caroline street in the town of Fredericksburg, being the lower part there of for the full end and term of four years from the date here of, and to furnish said Stribbling with all materials necessary for putting the houses in said lot including the () guidences and repairs as far as he is able to do so from the lumber now on said lots. And the said Stribbling agrees on his part to do all the repairs to the two houses situated on said lot () to make them comfortable and also to put up all evidence () said lot. () () () and agree that the said Stribbling () he () at anytime to do so () have the () of renting to a good tenant the lot () () () () () by the said Allen () the unoccupied () of said lease. On the two and () () of this agreement the () () () to the other () the () of () () and () .

Witness the following signatures and seals.

his
Jeremiah *J* Allen
mark
George H. Stribbling

IN CIRCUIT COURT OF SPOTSYLVANIA

ALLEN & OTHERS

VS,

STRIBBLING

The defendant Stribbling in this case demurs generally to plaintiffs bill

And the said defendant further says that the said Complainants are not entitled by law to sustain their aforesaid suit in Chancery against him, because he says that said complainants have joined in their said suit a claims to set aside lease for land and executed to him by Jeremiah Allen in his lifetime upon grounds of equitable Jurisdiction and also a distinct claim for goods and chattels of the decedent which they allege the said defendant appropriated and for which their remedy is clearly by action at law.

This defendant therefore and for said cause demurs specially to plaintiffs bill and avers that he is not bound to answer the same, and this he is ready to verify and he prays judgment of the Court whether he is compelled to answer the same.

(SIGNATURE)

ALLEN vs. STRIBBLING

Richard Allen being duly sworn states that from his knowledge of the circumstances of the defendant Stribbling that he verily believes he is totally unable to pay the sum of \$250 or (even?) two hundred dollars he has but little property and is dependent for support upon his trade as a wheelwright.

Sworn to in open Court
(SIGNATURE)

Allen and others vs. Stribbling

The deposition of **Richard Allen** taken at the office of T.B. Bartow in the town of Fredricksburg to be offered as evidence in the above cause now pending in the Circuit Court for Spotsylvania County taken this 21st day of September 1866.

1Q Are you related to the late Jeremiah Allen

A Cousin to him

2Q Were you well acquainted with & if so for what length of time

A I was well acquainted with him for twenty-five or thirty years

3Q Was he or not totally blind and if so how long before his death

A He was totally blind ever since about the year 1854

4Q Was he a man of strong or weak mind. Answer this question fully.

A He was a man of very weak mind. He was a man of no mind at all. He was occasionally delirious

5Q Was he or not subject to Epileptic fits or fits of any kind

A He was

6Q Will you state any circumstances within your knowledge (that) induces you to say he was delirious.

A I can. I passed by his house twelve months ago and saw him sitting at the table eating and about one half an hour afterward I saw him down at Mr. Napets and he told me he had not eat anything that morning.

Counsel for defense here appeared and objected before giving opposition on the ground that I was (purely) () counsel for defense not having been present

7Q Was Jeremiah Allen capable or not of making a contract of importance at any period subsequent to the bombardment of Fredricksburg in December 1862

The defendant here objected with this question on the ground that it was a leading question and the witness no expert

A I should say he was not

8Q Would you or not have made a contract with him and if not your reasons

A I would not because I did not think him capable of making a contract

9Q Do you know the extent of the repairs put by the defendant on two houses of J. Allen and if so what in your judgment would be a fair compensation for such repairs and the enclosure around the lots

A I do know of the repairs and estimate them as worth about fifty-five dollars.

10Q Were those repairs made by Mr. Stribbling. Were they well done and permanent repairs or not——describe them

A I think they were made by Mr. Stribbling. I cannot say that they were well done. it was only a temporary fixture such as putting on weatherboarding, enclosing the lot (etc)

11Q Was the house occupied by Mr. Allen weather tight or otherwise describe its condition at and before his death

A The house occupied by Mr. Allen was not weather tight. It was in a dilapidated condition at and before his death

12Q Was this the condition of the said house after the repairs were put to it. THE DEFENDANT HERE EXCEPTED THIS QUESTION ON THE GROUNDS THAT THE COUNSEL FOR PLAINTIFF EXPLAINED THE QUESTION ORALLY TO THE WITNESS

A It was partly tenantable after the repairs were put on it. It was just as it stands now.

13Q Did you or not occupy the said house soon after Mr. Allen's death. If so, what was its condition.

A I did occupy the house after Mr. Allen's death. It was just in the condition it was before. I could not call it tenantable.

14Q Was there or not a double house on Mr. Allen's lot. If so, was there or not timber, weatherboarding, shingles and other materials sufficient to put the other houses in good and permanent repair

A There was a double house on Mr. Allen's lot. It was pulled down I think about (two) months ago in May or June, I do not know about that I suppose that there was sufficient material.

15Q What is your occupation or trade. How long have you been engaged in it

A Carpenter. I have been engaged in it about thirty years.

16Q Who showed the houses to Mr. Towles and Mr. Sacrey before they gave their depositions.

A Dorsey Allen [Here the attorney for plaintiff asked the witness orally whether he stated this answer positively and the reply was he did]

17Q Do you know whether Dorsey was or not acquainted with all the repairs put on the houses and lots

A I suppose he did. He was there all the time

18Q Do you know whether there was any timber () or bricks taken from the house that was pulled down that were not used in the repairs. If so what was done with them

A I saw some bricks taken across the street to Mrs. McFarlans old building. I did not know what the object was

19Q Did you or not put any repairs on the house of Jeremiah Allen when you took possession of it after his death. If so, state what repairs and if so to what amount.

A I did put repairs on it to the amount of about twenty dollars. Building a porch, cleaning and whitewashing

EXAMINED BY DEFENDANT

20Q What were your relations with Jeremiah Allen. Were they pleasant or otherwise

A They were pleasant

21Q Were you on speaking terms with him during the last few years of his life

A Of course I was

R. Allen

The deposition of **George P. Hoback** taken at same place and date to be offered as evidence in the same case on behalf of the defendant.

1Q Did you ever occupy as a tenant a dwelling house belonging to the estate of Jeremiah Allen deceased and which was located in the upper part of Main Street in this town

A Yes, I did

2Q When did you so occupy and what rent per month for the entire building did you pay.

A I moved in 17th February 1866. The first month I had the two upstairs rooms and he charged me ten dollars per month—on the 17th of March I took possession of the whole house and he charged me sixteen dollars per month

3Q What was its general condition. Did the roof leak

A The house was in tolerable condition. The roof did not leak while I was there

4Q Did Mr. Richard Allen occupy the same premises. If so was it before or after you occupied them?

A Mr. Richard Allen did occupy the same premises. He was there when I moved there. He left the house before I did.

5Q To whom did you pay your rent up to the time of your leaving the property.

A What I did pay I paid to Mr. Richard Allen

6Q Are you in any way related either to Jeremiah Allen, deceased, Richard Allen or George A. Stribbling?

A No, I am not.

7Q What repairs did Richard Allen put on the house during the period he occupied it.

Objected on the ground that the question in () to elicit the truth, could () () be put in a form which would not presuppose that R. Allen had put repairs in the house

A I don't know.

The deposition of **Sinclair A. Embry** taken at the same place to be read in the same cause this 22 September 1866

1Q Are you acquainted with the property of Jeremiah Allen deceased situated in the town of Fredricksburg. If so, do you know that the same was repaired some fifteen months ago by one George H. Stribbling

A I am acquainted with the property of Jeremiah Allen deceased situated in the town of Fredricksburg. I do know that the same was repaired by George H. Stribbling some fifteen months ago

2Q Do you know of the condition of the said property previous to the repairs being placed thereon by George H. Stribbling. If so, state all you know about the condition of the property.

A I do know the condition of said property. The condition previous to the repairs to the property was in a (reckless) condition. The house which he now occupies was a mere hulk, torn considerably to pieces. The weatherboarding was off. The plastering was off. Windows had no sash in them, no frames save one. There was no fencing. The house that Mr. Allen occupied was also in a very reckless and filthy condition. One room of Mr. Allen's house was all that was fit for any one to stay in, and that was very filthy, bad condition.

3Q Please state the character of the repairs put upon Allen's property by Stribbling and also your opinion of their permanency.

A The repairs put on Allen's houses were as good and better than I had supposed could be done with the material that he had to repair with. They were permanent as could be with the material he had to repair with.

4Q by Plf. Where do you reside and what is your occupation or trade

A. I reside in Fauquier County, Deep Run Mills. I am a wheelright and millering.

5Q How come you to examine the property in question.

A I was there during the war seeing Mr. Allen at the house, he asked me if his houses was or not mightily torn to pieces. I examined them and told him they were very much torn to pieces.

6Q by Plts Do you mean to say that all the weather boarding and plastering in the house occupied by Stribbling near off.

A No. I do not. There was of the weatherboarding off in large places the plastering was off in large places. I suppose there was probably nearly a third of the weatherboarding off including the different parts of the house. The plastering I suppose one fourth-was off.

7Q by Do Was there not a third house larger than the two you have spoken of.

A. There was a third house, was larger than the one Mr. Stribbling now occupies not so large as the one Mr. Allen occupied.

8Q by Do Do you know that all the lumber & () weather boarding shingles, bricks () belonging to the last named house were used in repairing the the other two houses.

A I do not

9Q by Do Do you know that bricks and other materials were taken from the lot by the defendant.

A. I do not.

REEXAMINED BY DEFENDANT

10Q You have said that you visited Mr. Jeremiah Allen (in coming to the dwelling) during the war, did you regard him as a man of sound mind and capable of managing his own affairs.

A. I did regard Mr. Allen as a man of sound mind. I did regard him as capable of managing his own affairs.

11Q. In your conversations with him, did he talk of other subjects than the condition of his property.

A Yes

12Q Did he converse rationally and pleasantly about them

I PROTEST AGAINST THE QUESTION

A. He did

13Q by Plts Where did you stay last night

A. At Mr. Stribbling's

14Q Did you have a full conversation with the defendant as to the the matters you have stated in this deposition.

A. No By Defense

15Q Have you any interest pecuniary or otherwise in the land now defending between Allen and Stribbling.

A. I have not

16Q Were you relations with Jeremiah Allen during his lifetime of a very pleasant character and did he not as you believe regard you in the light of a friend
escept to this question

A. My relations with him were pleasant, he regarded me as a friend and a nephew.

17Q by Do Are you related to the defendant

A Fourth cousin

By Defense

18A Did you ever in the lifetime of Allen under him any apertance in the way of presents or gifts. If so, what?

A. I did not

Sinclair A. Embry

Deposition of **Edwin Daniphan** taken on this same day at the same place in the same cause.

1Q Did you purchase of Dorsey Allen, child of Jeremiah Allen, any property left by said

Allen at his death. If so state what?

A. Yes, I purchased an old bedstead, one chair and an old (counterpoint?) quilt or something of that kind with the consent of his sister Betty Butler which she said was for the purpose of buying him a hat.

E. Daniphan

I certify that the foregoing depositions were taken and sworn to before at the time and place described in the caption to each Given under my hand A.W. Wallace Notary public

() fee for taking depositions of witness for pliff (one hour) .75

“ “ “ “ “ “ “ “ deft (two & half hours) 2.25

\$3.00

The deposition of **Dr. W. S. Scott** taken this 16th day of August 1866 at the office of T. B. Bartow to be offered as evidence in the case of Allen () vs. Stribbling now pending in the Circuit Court for Spotsylvania. Taken in the presence of the counsel of both parties by counsel.

1Q by Pt Were you acquainted with the late Jeremiah Allen and if so please state what was the character of his mind. Was it weak or strong—

A. I knew Mr. Jeremiah Allen prior to January 1863. His mind and body were both feeble.

2Q by De From your knowledge of his mental and physical condition did you consider him capable of making of making a contract with understanding or judgment.

A. I attended him as a physician in 1862. He was then perfectly blind and his mental condition so feeble as to unfit him for making business contracts.

3Q by De Do you confine your answer to his condition when feeble from indisposition or do you mean to apply it as the general character of his mind. Do you think him capable of making a contract at any period after he was blind.

Answer I referred to his general condition and not solely to the periods of his illness. He had ben subject to Epilepsy for some years prior to the time of my attending him and his mind () enfeeble thereby. Do not think him capable of making contracts after I knew him to be entirely blind.

Wm S. Scott M. D.

The depositions of **William Brannon** and others taken at the office of Thomas B. Bartow in the town of Fredricksburg in (pursuance) of (notice) & in the presence of the counsel of both

parties to be read in evidence in the case of Allen and others vs Stribbling pending in the Circuit Court of Spotsylvania County.

The witness being duly sworn upon the holy Evangelists deposed as follows——

Mr. Brannon examined by defendant

1Q What is your age and employment and how long have you resided in Fredricksburg

A I am fifty-two years old. I am a gun smith. I have lived in Fredricksburg thirty-two years.

2Q How long before his death were you acquainted with Jeremiah Allen late of this town.

A I believe I knew him in six months after I came to this place - not more I am shore

3Q What were your relations with the said Allen. Were they intimate or otherwise.

A Quite intimate

5Q Do you know of his having made in 1865 a lease to George H. Stribbling for certain real estate of his - the said Allen's - in consideration of repairs to be done by the said Stribbling to the property of the said Allen. If so state all you know in (regards) to the said matter.

A I don't know any thing about his giving Stribbling a lease but I know this much that Mr. Allen expressed a wish to see Mr. Stribbling and finally Mr. Stribbling comes to town and calls to see me and we went in company to Mr. Allen's. I by way of foolishness introduced Mr. S to () (). Mr. S spoke to Mr. Allen. Mr. Allen exclaimed Haywood and handed his hand out. After this Mr. Allen asked my opinion about getting Mr. Stribbling to take one house for some period of time——four and five () were named—for repairing of both. I told Mr. Allen that I thought it would be to advantage of both whereupon Mr. Allen said “if the war last six months longer he would not have a shingle left and if the war should end in a short time he might be somewhat (looser).

7Q You say Mr. Allen expressed a desire to see Mr. Stribbling. Why did he wish to see him.

A By the after talk I took it for granted it was to repair the property

8Q Did he seem glad that Mr. Stribbling had come on the occasion referred to

A He did sir

9Q Do you recollect what time the interview between Allen and Stribbling took place

A I do not sir

10Q Did you regard Allen as in a condition mentally and physically to attend to his own business at that time. How did the community regard him

The counsel for the plaintiff objected to the foregoing question as follows

“How did the community regard him”

A I considered him as much so as I ever considered him capable of doing business. I am unable to say how the community regarded him. I did regard him as a condition to attend to his business.

11Q Did you ever hear Allen express himself as satisfied or dissatisfied with the contract made with Mr. Stribbling in regard to the repairs upon his property.

A I heard Mr. Allen say that Mr. Stribbling had not quite finished and that he should hold him to the contract

12Q When did that occur and was it the only conversation about the matter you ever had with him

A I don't know when the above conversation occurred. It was not the only conversation I ever had with him about the matter. I asked Mr. Allen upon one occasion had Mr. Stribbling finished. He said “No, he had not put some slats in the window shutters.” I said I reckon he would do it. Mr. Allen said if he did not he would make him.

13Q Did Stribbling attend upon Allen in his illness and did he on such occasions offer kind and attention to him

A I was there several times in company with them and so far as I saw he did.

Wm Brannan

John James Chew examined by the defendant

1Q Please state all that occurred when you presented to Jeremiah Allen the original lease dated June 1st 1865 and herewith exhibited to you and which was in the nature of a contract between J. Allen and G. H. Stribbling

A I was applied to, I think, by Mr. Stribbling to go up to Mr. Allen's house where I found Mr. Allen who requested me to prepare the original contract now shown me. I prepared it. Mr. Stribbling was present at the time. Subsequently I took it to Mr. Allen—Stribbling being also then present. I read it to Mr. Allen who suggested two alterations viz. 1st in reference to

the term of lease and 2nd in relation to supplying lumber as will appear from () in lease.

2Q Did you regard Allen at the time as of sound mind capable of contracting and being contracted with

A In my interview with him I saw nothing to indicate that he was laboring under any mental infirmity. He seemed to me to be entirely (compis) (mentis)

Mr. Slaughter examined by the defendant

1Q Did you know Jeremiah Allen late of this town. If so was he in your opinion capable of contracting and being contracted with for the last five years of his life

A I knew him. In regard to his capacity to contract for the last five years of his life I have to say I remember that Mr. Stribbling called on me I think in the Spring of 1865 to write a contract between himself and Mr. Allen which I declined to do so. Immediately preceding the above time I saw Mr. Allen at my office sometimes once or twice a week. I considered him at that time capable of contracting and being contracted with

2Q What is Mr. Stribbling's general character in this community as a peaceable fair dealing man.

A I have had no dealings with Mr. Stribbling but I believe his character is that of a peaceable man. He has never been in my ('s) office () () () any offenses as far as I remember.

3Q Have you not been Mayor of this city for the last six years.

A I have been for more than six years.

Dr. B. S. Herndon examined by the defendant

1Q What is your profession and how long have you been practicing

A I am a physician and have been practicing for thirty-seven years

2Q Were you acquainted with Jeremiah Allen late of this town. What was his mental condition especially in the latter years of his life.

A I knew him very well. Had occasion to see him often. I never discovered any thing indicative of unsound mind in him

B. S. Herndon

Dr. J. Gordon Wallace examined by the defendant

1Q What is your profession and how long have you been practicing it

A I am a physician. I have been practicing for sixteen years.

2Q Did you attend Jeremiah Allen in his last illness. If so state all you may know touching his physical and mental condition.

A I attended him I think in August 1865 at which time he was suffering with an acute attack of dysentery. My attention was more drawn to his physical than mental condition. He answered all my questions in regard to his condition in a rational way

J. Gordon Wallace

A. E. Samuel examined by the defendant

1Q What is your age and how long have you been living in Fredricksburg

A I am sixty-one and have resided in Fredricksburg for upwards of 40 years

2Q Did you ever hear Jeremiah Allen speak of a purpose to contract with George H. Stribbling for the repairs of his (Allen's) property. If so when. State all that occurred in conversation.

A I heard him speak of it one day in my shop. I don't remember when. He said that Stribbling was coming down to fix up his houses and I asked him what he was going to do about lumbers being so scarce. He said he intended to pull down one house and repair the two houses with the lumber. That is all I know.

3Q Did you ever hear Allen speak of the repairs made by Stribbling after they had been completed

A No sir

4Q What was the condition of the property () previous to the repairs being placed upon the property.

A I cannot say positively. I know it was very much out of order. I did not go through it to examine it

5Q Did you ever hear Jeremiah Allen previous to his contracting with Stribbling speak of the

condition of his property.

A Yes sir. I have heard him say it was so bad he could not live in it himself and it was too bad to rent out or words to that amount.

A. E. Samuels

Robert H. Alexander examined by the defendant

1Q Were you acquainted with Jeremiah Allen late of this town.

A I knew him for a number of years—not intimately acquainted with him.

2Q Did he have a conversation with you during the war in regards to the sale at auction of the woodwork of the houses on his lots in this town.

A Just before the close of the war or immediately after (I think it was during the year before the war closed) he called on me on two occasions to make sale of two damaged houses up town which he said were his.

3Q Please state all that occurred in the conversation you allude to.

A Allen gave as a reason for wishing to sell the houses on his lots that he had not the means to repair them and that he wanted money to defray his expenses to his relations in Maryland. Mr. Allen asked my opinion as to what houses would bring and being told he made the comparison between the value of Confederate money and greenbacks and said it would be little or nothing that the houses would bring. The last time that he called on me to make sale of the property I objected to advertising the houses unless the sale was positive. He insisted that the sale should be made and said they should certainly be sold. I mean by advertising publication on the flag. The next morning (this conversation occurred in the evening) he sent his little son down to notify me that the property would not be sold.

4Q State your opinion of his mental condition on the occasions referred to.

A I think he was perfectly sound in his mind.

5Q State if you know George H. Stribbling and your opinion of him as an honest fair dealing man

A I know Mr. Stribbling. I have been intimately acquainted with him for eighteen months and have never seen or know any thing wrong about the man at all. He has assisted us frequently in selling in the store. We have trusted him to the cash draw the same as a clerk. I

believe him to be too honest and too liberal for his own good.

6Q How long have you been doing business in this town

A I came here as a clerk in 1829.

Robert Alexander

Joseph W. Adams examined by the defendant

1Q Did you know the location in the town of the dwelling house of Jeremiah Allen deceased. If so state what was their condition previous to being repaired by George H. Stribbling

A I did know the location of these houses. The doors were all thrown open so any body could pass in and out. The windows were all broke—lower windows—fencing all down around the houses so any body could (pass) through anywhere and do what they please with the property.

J. W. Adams

The deposition of **John F. Butler** taken at the office of F. B. Bartow in the town of Fredericksburg this 11th day of May 1866 in pursuance of notice and in the presence of counsel of both parties to be read or evidence in the case of Edwin Allen and others vs. George H. Stribbling pending in the Circuit Court for Spotsylvania County.

1st Question by plaintiff Were you acquainted with the late Jeremiah Allen if yea, for what period of time.

A. I was acquainted with him from Fall of 1862 of 1862 until Winter of 1863 when I left here.

Q by D Do you know the defendant Stribbling. If so did you or not converse with him in reference to said Jeremiah Allen and state what he said in reference to some difficulty between himself and said Allen and when this conversation occurred.

A. I do know him. I did converse with him in reference to J. Allen last December. I came to Fredericksburg and had conversation with Mr. Stribbling in reference to the repairs on J. Allen's houses. We conversed about the state of J. Allen's mind before he died. Stribbling said he thought him (Allen) a crazy man—that he would take the large stone step at the house down and throw it over and over in the street when in his crazy fits and Stribbling said he did not think he Stribbling could do it. Stribbling said that he knocked Mr. Allen down in one of his crazy fits and held him down on the bed. This is about all I heard him say about that difficulty..

3Q by D Did you hear the defendant say anything about said Allen being afraid of him or what their relations were to each other and if so when.

A. Yes I heard Stribbling say that J. Allen said before he died that he was afraid Stribbling would kill him. This conversation was in December 1865.

4Q by same Did you ever hear Stribbling say whether there was or was not any timber or other materials left after he had finished repairing the houses and enclosing the lots and if so state all he said about it.

A. Yes I heard Mr. Stribbling say that there was some lumber left but I don't know how much. There were some large () lying in the yard which Mr. Stribbling was using for (FUEL?). I requested Stribbling not to burn the lumber and he said that there was no lumber burnt but this was a () and it was () and I told him that the end that was lying there was sound and I did not know whether this end he burnt was so or not. He told me that he had sold some brick also. I don't know how many. He had sold some to different persons, some to Mr. Anderson and some to Mr. McGee. He said that Mr. McGee had about 600. I don't know how many he sold Mr. Anderson. He said that Mr. McGee had not paid him for the brick that he received. He said he was to get \$4 a thousand.

5Q by same Did you see any lumber except the () to which you referred in the previous answer and if so what quantities and did you know what became of it.

A. Yes I did. I saw several () lying near where they cut wood. I do not remember how many. I do not know what became of them.

6Q by D Did Stribbling say any thing about this timber. where it came from, whether it was or was not a part of the house pulled down from Allen's house to make repairs.

A. Yes, he said it came off the building which he tore down.

7Q by D. You have said that you knew Allen from the Fall of 62 to the Winter of 1863. Be pleased to state what was the state of his mind and whether he was or was not then capable of making a contract with understanding of his interests.

(J. EXCEPT TO THIS QUESTION ON THE GROUND THAT THE WITNESS IS NOT A MEDICAL MAN CAPABLE OF GIVING AN OPINION IN THE PREMISE)
ABOVE EXCEPTION MADE BY DEFENDANT'S COUNSEL.

A. Mr. Allen had a very weak mind and I did not at the time I knew him think him capable of making a contract or transaction any business at all for his little boy Dorsey had to lead him where ever he went.

John F. Butler cross-examined by Deft.

8Q Are you not a party plaintiff in Chancery Suit now defending in Circuit Court of Spotsylvania against George H. Stribbling and directly interested in the results of said suit

A. I am

9Q Did you not marry Elizabeth, daughter of J. Allen deceased and if so at what time.

A. I did last October—the latter part of the month.

10Q Did you ever have more than one interview with George H. Stribbling about his and J. Allen's affairs.

A. I did not except at intervals we talked about the family I () how that was.

11Q Did all that you have deposed to occur at one interview between you and Stribbling.

A. It did about the same time.

12Q Was that interview solicited by your self or was it accidental.

A. It was solicited by Mr. Stribbling. He brought the subject up while we were talking about the family. I think I first mentioned the lumber.

13Q. Do you know of your own knowledge that Stribbling ever () to his own use any of the lumber of J. Allen's otherwise than in repairing the said Allens houses and enclosures.

A. I do not except a portion of the () he told me he had burnt.

14Q Are you confident that the answer as made to the second question in () actually occurred in a conversation between you and Stribbling.

A. I am confident that it did.

15Q Do you know of your own knowledge whether Elizabeth Allen now Elizabeth Butler and Ed. B. Allen his children remained with and took care of their Father-J. Allen during the last days of his life.

A. I do not for I was not here during the last days of his life.

John F. Butler

The deposition of **Dorsey M. Allen** taken at the same time and place and in the presence of the counsel of the parties to be read in the same cause—

1Q What is your age

A. I am going on 17 years old. I don't know the day but my family says next October I am 17 years old.

2Q. by D How long before your father's death was your father totally blind.

A. Going on 8 years.

3Q by same How long before his death did you commence leading him about the streets.

A. Before the shelling which was in December 1862.

4Q by D What his state of mind and bodily health after the shelling.

A. At times he would be entirely out of his mind. Part of the time he was sick and a part he was well.

5Q by same Who supported your father after the shelling.

A. The Corporation of Fredericksburg did a part of the time and Mr. Jno. Beck a part of the time and the Yankees a part of the time.

6Q by D Did the defendant Stribbling furnish him with food and if so state what food and for what period of when he did so.

A. No only some times he gave him a little milk in () () or bread.

7Q by D Do you know of Mr. Stribblings selling any bricks or timber and if so to whom

A. I know that he sold brick. I don't know of any lumber. He sold bricks to Mr. Marshal Anderson and to Mr. McGee.

8Q by D Did you or not help to clean these bricks and if so did Mr. Stribbling make you do so.

(THE COUNSEL OF DEFT OBJECTED TO THIS QUESTIONS AS INTRODUCING MATTER IRRELEVANT TO THE BILL)

A. I did help to clean them. Mr. Stribbling told me to do it. I was staying at the time with

Mr. Stribbling.

9Q ques by same Were the bricks spoken of above taken from the house pulled down.

A. A part of them were and a part were taken from a chimney that stood on the premises.

10Q Did you assist in putting out the fence around the lots and if so what did you do.

A. I helped to dig post holes and to ram the posts

11 quest by same Did you ever hear your father complain to Mr. Stribbling about the way he had placed the fence or to the closing of the alley. State fully all you know on the subject.

A. Yes, he said he did not give Mr. Stribbling that alley nor half of the lot.

12Q by same How long were you engaged in digging post holes and ramming the posts.

A. I was engaged at it about two or three weeks.

13Q by same Was you father afraid of Mr. Stribbling. Tell all you know about it.

A. Yes, he said Mr. Stribbling was going to kill him and he was afraid for Mr. S. to come near him.

Dorsey M. Allen cross examined by the Deft

14Q What do you mean by your father being out of his mind at times.

A. One day going out to Mr. Jennings, Mr. J told him that his Mr. Jennings daughter was going to get married and Father asked him if she was coming out of the ground.

15Q Did you not remain with G. H. Stribbling some time after your father's death and if so how long.

A. I staid there nearly two months.

16Q Did Mr. Stribbling ever receive any pay from your board while you were with him.

A. No sir.

17Q With whom and where have you been staying since your father's death.

A. After leaving Cousin Haywood I went to stay with my brother in Washington and then with John Butler in Washington with whom I am now living.

18Q When did you come to this place, for what purpose and who paid your expenses.

A. I came here last Wednesday night to choose my guardian. Mr. Butler paid my expenses.

19Q Who is your guardian.

A. Mr. Butler

20Q Did Mr. Anderson to whom you say Mr. Stribbling sold brick do any repairs or work to either house.

A. Yes he did work on the one retained by my Father.

21Q Were there any shingles sold during your father's lifetime from the premises and if so for what purpose was the money appropriated.

A. To buy glass to put in the houses.

22Q Was there as far as your knowledge goes any thing sold from the premises after your father's death beside bricks.

A. No sir.

23Q Do you know how many bricks were sold.

A. I do not.

24Q from Plt What was the state of your father's memory after the shelling.

A. I have noticed going along the street he would ask who it was that was passing him and before and after the person passed by him he would ask me again who he was though I had told him just before.

25Q by (deft) Was your father not a little deaf as well as blind.

A. He was.

26Q by Pltf Are you certain that your father heard you the first time when he inquired the names of persons passing him in street and nevertheless asked you a second time.

A. Yes sir.

27Q by deft What makes you certain

A. Because sometimes when I would tell him I would ask him if he heard me and he would say he did.

Dorsey M. Allen
per *St Geo R. Fitzhugh*

The foregoing depositions were taken, sworn to and subscribed at the time and place mentioned in the captions before me—a Notary Public for the Corporation of Fredericksburg.

Given under my hand this 11th day of May 1866

() *Fitzhugh*

Notary Public

May 11th 1866 the depositions of **J. F. Butler** and **D. M Allen** having been taken and closed. The taking of further depositions in case of Allen v. Stribbling is adjourned over until 10 A.M. on Saturday 12th May.

() *Fitzhugh, N.P.*

The deposition of **John E. Beck** taken between the hours of _____ on the 12th day of May 1866 at the office of Thos. B. Barton in the town of Fredericksburg in the State of Virginia. In () of notice and in the presence of counsel of both parties to be made in read in evidence in the case of Edwin Allen and other v. Geo. H. Stribbling pending in Circuit Court of Spotsylvania Co. Taken at the insistence of the pltf.

The witness being first duly sworn on the Holy Evangelists—deposes and says as follows

1. Q. Were you acquainted with the late Jeremiah Allen and if so how long previous to his death. State if you know how long his eyesight failed him and how long before his death he was totally blind.

A. I was acquainted with J. Allen. I knew him for eighteen or twenty years and maybe longer. I don't recollect exactly how long he was totally blind perhaps five or six years. It was gradual. He was going blind for more than twelve years it seems to me.

Question by same When did Jeremiah Allen die

A. In August 1866

2Q by D What was the character of Mr. Allen's mind especially after the shelling of Fredericksburg in December 1862 up to the period of his death—was it strong or weak and was his memory good or not. Answer this question fully.

A. I think he became more childish every day up to his death. He certainly was more irritable. His memory was not very good towards the last as far as I could judge. And I have certainly seen him cry and fret over things that I thought were not very important. I have seen him frequently in eating mistake his mouth and in smoking his pipe do the same.

3Q What did Mr. Allen say why he had missed his mouth?

A. He has told me frequently when he was quiet and calm I have more the matter with me than the loss of my sight for at times I can not find my pocket nor tie my shoes.

4Q From your knowledge of Mr. Allen do you deem him a man of sound mind and capable of making a contract in June 1865.

A. From his blindness alone I did not think him able to make a contract of that kind when I thought sight was necessary or without some particular friend to advise him and at other times I deemed him incapable from other causes.

5Q What other causes do you allude to in the last answer that rendered him incapable of making a contract. Answer fully

A. I considered him childish at times and he has told me that there was more the matter with him than the loss of sight.

6Q Did you have any conversations with Mr. Allen soon after he made the contract with Mr. Stribbling. If so state fully all that occurred.

A. I had a conversation with him whilst the repairs were going on. He told me about the contract he had made and seemed dissatisfied. I asked him why he made such a contract without consulting some friend. I think his answer was "I don't know, John". He further remarked "He has to take care of me as long as I live or see to me". I don't recollect which remark he made but he did not say it was in this contract nor did I ask him.

7Q Have you seen the repairs made on the houses and lots. If so are they permanent and such as you deem putting the houses and enclosures in good repair.

A. I have never examined them at all only seen them in passing.

8Q In what manner did Mr. Allen live after the contract was made. Was he taken care of by

Mr. Stribbling or was he supported by private or public charity.

A. He used to visit me once or twice a week and spend the day. He used to draw rations from the Yankee Commissary I think. I have heard him say Mr. Stribbling had some cooking done for him. I did not understand Mr. Allen to say what he meant by taking care in seeing to him. I myself did not understand that Mr. Stribbling was to support him. Mr. Allen sometimes visited other persons I understood.

9Q Did you ever hear Allen complain that he was hungry and had had nothing to eat for sometime.

A. No. I only heard it reported about street that he had said so.

Mr. Beck crossexamined By deft

10Q What is your occupation

A. A farmer

11Q Did you ever see the contract of lease between Allen and Stribbling or do you know any thing of its provisions.

A. I have never seen it nor do I know any thing about it except what has been told to me by Mr. J. Allen and by Mr. Stribbling.

12Q Did the adult children of J. Allen - viz E.B. Allen and Bettie Allen now Bettie Butler-remain with and take care of their father in the last days of his life.

A. I think not. E. B. Allen was living in the neighborhood of Washington City during his father's illness. Bettie Allen was I believe to see him once or twice. I heard as an apology e.g. from her-for her not coming to see him oftener that she was sick with () fever. Some seemed to excuse he others thought she could have come oftener if disposed. I believe they had a falling out sometime previous to his illness.

13Q Did you ever see Stribbling in attendance upon Mr. Allen during the last days of his life and did he or did he not take care of Mr. Allen.

A. I was there once during Mr. Allen's illness and I saw Mr. Stribbling there and I was there the day of the funeral and Mr. Stribbling was busy attending to the making of the coffin. I understood that he was with him when he died and helped to lay him out.

14Q Was Mr. Allen in the last days of his life possessed of very great strength at different

periods of time.

A. Not that I know of. He was very weak as far as I know.

15Q Did not E. B. Allen visit here just after the war closed—say in the Spring or Summer of 1865 and did he not know of his father's infirmities

A. I saw him at his father's house before his death with his wife and Mr. J. Allen told me that he said that he was going to send for J. Allen his father and take care of him. This was a month or so before J. Allen's death.

16Q Were E. B. or Bettie Allen at their father's funeral.

A. I think not..

17Q Was J. Allen fretful, peevish and (passionate?) towards his children and others. Had he the means to support them or lodge them or had either of them the means to sustain him or themselves (here?) knowledge.

A. I think he was. I believe he had not the means to support and lodge them. As far as I know they not the means to support him or themselves here. I heard Edwin was poor and I knew Bettie was.

18Q Were not both E.B. and Bettie Allen fully grown and do you not think that together they might have been able by proper exertion to have supported their father in his declining years.

A. They were fully grown. As J. Allen drew his () () out frequently. I think his children could have cleaned out his house and made him comfortable but I do not believe that E. B. Allen could have spared enough from his business to have supported his father entirely.

19Q Did they as far as your knowledge goes either clean out his house or furnish any money for their father's support.

A. I think Mr. Allen told me that E. B. Allen had sent him some money and I heard he sent his brother Dorsey some clothes. I heard that Bettie cleaned up J. Allen's house once or twice but I knew she had the () fever about the time of his illness.

John E. Beck

The depositions of **H. M Towles** and **B. Sacrey** examined together by consent of the Counsels of both parties to be read in the same cause.

1Q to both Have you examined the houses of the late Jeremiah Allen with the () as to the value of the workman ship on the houses and enclosures.

A by HM Towles Yes

A by B. Sacrey Yes I examined them in company with Mr. Towles

2Q Did you () thoroughly and value the repairs made in a permanent manner and such as a workman would do to put the houses and enclosures in good order. Please describe the repairs upon each house and the character of the enclosure.

A by Mr. Towles I did examine thoroughly well the work done to the fence first say is passable I should say. As to the workmanship upon the houses I call that scarcely worth noticing—that is the carpenters work—there was some plastering-I had nothing to do with that. Let me state what I saw. I went up stairs. The roof had nothing done to it that I could see in neither house. The patching on the north side of the building was weatherboarding and I () it was weatherboarding and worth two dollars and a half until I went up stairs. Then I discovered that the weatherboarding was not nailed and for that () I knocked off half a dollar. Oh no sir by no means #in order. I could see the sky through I don't know how many places. I think I could see seven or eight places on one side. I walked around the premises inside and out and looked on top of each house. Nothing had been done to them and they both leaked. I even went up stairs. I examined up there it is in a bad condition. What I saw I see nothing done up stairs. The weatherboarding was all loose. A portion of it for which fifty cents was knocked off.

3Q Was the work done on the houses sufficient to put them in good and permanent repair and what do you consider the value of the work done.

A. No by no means agreeable to my judgment. I have a little experience on that subject. I put the fences down at fifty cents a pound. I made out 66 pounds the repairs to the house so far as I could see what was done was worth something like \$22 and a big () at that.

A of Mr. Sacrey to the second interrogatory. I did examine thoroughly. The fencing was in good order. It was also built out of old stuff. The weatherboarding on the gable end of the upper house was repaired out of old stuff. I examined it up stairs. Nothing that I saw was done to the roof at all. The houses were not in good order by no means. You could see daylight through them. I did not see any workmanship done on the houses at all except the little weatherboarding.

A to third question by same. No sir it was not. We (Mr. Towles and myself) allowed twenty dollars for the repairs on the two houses.

4Q by same to Mr. Towles How long have you known Jeremiah Allen?

A. I reckon I have known him about forty years.

5Q by plf What the state of his mind since the shelling in 1862. Was it strong or weak.

A. Well sir I consider J. Allen for the last four or five years his mind declined very rapid according to conversations I had with him. So much so that I would not have made a bargain with him for five dollars—because I would not conceive that it would be binding at law because I did not consider him of sound mind.

6Q What is the house and lot occupied by Mr. Stribbling worth per month as rent

A. I could not tell you that. It is worth all you could get. I am paying ten dollars for a house which is Mr. () kitchen.

A of Mr. Sacrey to same question I should think if these houses were in good order they would each I suppose bring ten dollars per month.

Mr. Towles and Mr Sacrey crossexamined by the Deft.

7Q Was Stribbling or any one representing him present at the examination of the premises referred to.

A of Mr. Towles Not that I saw or knew of—

A of Mr. Sacrey I never saw any one if they were. There was a young man there with us that showed us the work

8Q Did Stribbling know that you intended to make the examination referred to.

A by both No sir. Not as we knew of.

9Q Who was the young gentleman who accompanied you in the examination of the premises referred to in order to point out the work of Stribbling.

A by both He said his name was Butler I think.

10Q Who requested you originally to make this examination in company with Mr. Butler.

A by both Richard Allen asked us to go up there and examine the work.

11Q Previous to the examination of these premises did you ever have any interview in regard to said examination with T B Barton counsel for plaintiff.

A by both No sir- (none?) since till I came to his office to testify.

12Q Were you present when Stribbling repaired these houses and do you know any thing of the character of work at the time it was executed.

A by both Know I do not and was not present

13Q Do you know that you saw or had pointed out to your all the work that Stribbling performed on these premises.

A by both We do not know whether all was pointed out to us or not. The young man (I think his name was Butler) said that was all the work done. We saw nothing new—it showed for itself.

14Q Do you know of your own knowledge that the repairs on the premises referred to were done by Stribbling the defendant.

A by both We do not know who did them nor when they were done.

15Q Did you enter the house occupied by Stribbling

A by Mr. Sacrey I went into the open house, I don't know who occupied it.

A by Mr. Towles I will not be positive. I think the young man said that the lower house had nothing done in it. We looked at the roof of this house from the outside front ()- The young man said that Mr. Stribbling was done up the country and I was under the impression that no one was in his house.

16Q What day did you make the examination referred to

A by both Yesterday the 11th of May

17Q Do you consider yourselves first class carpenters.

A by Mr. Towles I should like to see any one in this town show me any thing even Mr. Jas ()

A by Mr. Sacrey Nor sir I do not but I can do as good work as I see about here and I know when work is done in a workmanlike manner and as it ought to be and I have been at it long enough to know.

Further Answer by Mr. Towles I commenced to work at 16 years old. Served apprenticeship for five years and have been working at the trade ever since and am now 67 years of age. All

this is useless

18Q Are you a Physician or did you ever study Medicine

A by Mr Towles No

Henry M. Towles

B. Sacrey

St Geo R. Fitzhugh

The deposition of **James Allen** taken at the office of T.B.Bartow. the 10th day of August 1866 in the presence of the plaintiff and deft () three counsels. To be read as () in the case of Allen vs Stribbling pending in the Circuit Court for Spotsylvania County.

1. Q. by plf. Were you well acquainted with the late Jeremiah Allen, if yea, did you see him often?

A. I am as well acquainted with him as I am with myself. He came to my house sometimes every day and sometimes every two or three days. Sometimes he would eat breakfast there and dinner too.

2. Q. What was the state of his mind from the bombardment of Fredricksburg in Dec 1862, and especially during the year of 1865?

A. Well the state of his mind was I did not think he had much mind at all - his right mind. I used to see him often enough.

3. Q. by Do. Was his memory good or otherwise.

A. No sir, I should not think it was.

Q. Can you state any facts () his memory to be difficult?

A. Well I can tell you what I have seen. He has been at my house and had something like the (). I have went with him home some nights () and sometimes he would start to tell me about some person or other but he never has told me the name yet. He would talk and I would say Jerry what's the matter with you. Why don't you tell me what you are going to tell me. Jerry what are you talking about? He did not tell me at all what he was talking about.

4. Q. by same From your knowledge of said Allen's mind, do you or not think that he was capable of making a contract.

A. No sir, I do not think so.

5. Q. Would you or not have made a contract with him in 1865 for any amount.

A. No sir.

6. Q. What is your age and occupation?

A. I was born in 1800. 8th of Jan. I sold milk.

7. What relationship did you have to Jeremiah Allen, deceased?

A. His father and my father and his mother and my mother were sisters and brothers.

James Allen

St Geo R. Fitzhugh

The deposition of **Fanny Allen** taken at the same time and place and in the presents of the same parties.

1. Q. by (counsel) Was Jeremiah Allen your brother? Did you see him after 1865?

A. Yes sir, he was my brother. I saw him often in 1865.

2. Q. by Do. Was he or not essential blind and if so, for how long before his death?

A. He was blind (), I don't know that I can recall the year, he was blind long before the war.

3. Q. by Do. What was the state of his mind. Was it strong or weak and especially since the bombardment in 1862?

A. His mind was weak, worse since the bombardment in 1862.

4. Q. by Do. Was J. Allen subject to fits if so was his mother or father or near relations subject to them also?

A. No sir, not that I know of, he was paralyzed, like he could not talk. I don't know that his state was.

5. Q. by Do. Were those attacks frequent or otherwise, how did they affect him?

A. He could not talk while he had them, I don't think he had them often.

6. Q. by Do. Do you think that J. Allen was capable of making a contract at any period in the year 1865?

A. No sir, I do not.

7. Q. by Do. Did J. Allen complain of the contract with the deft G. Stribbling?

A. Yes sir, soon after it was made.

8. Q. by Do. Did you ever see G. Stribbling commit violence on J. Allen?

A. Yes sir, he tried to push him in the bed and I told him not to do it. It occurred at his own house when Allen was sick.

9. Q. by Do. Was J. Allen afraid of Stribbling doing him injury, if you know any () state them.

A. He said he was afraid of him.

10. Q. by Do. Did you know that the deft. furnished J. Allen with food or attendance before or after the contract was in case?

A. No sir, he did not.

11. Q. by Do. Do you know that the deft. promised to take care of J. Allen before the said contract was made?

A. It was said he did.

12. Q. by Do. You have stated that J. Allen complained of the contract after it was made, please state in what particulars.

A. He did not think it was right and grumbled about it.

13. Q. by Do. You have said that the mind of J. Allen was weak, and that you did not think he was capable of making a contract. Do you remember his condition at the time the contract was made?

A. I don't think he was in his right mind at the time.

14. Q. by Do. Was J. Allen's memory good or otherwise?

A. No sir it was not. He would eat his breakfast at home and then go down town and say he had not eaten.

15. Q. by Do. Was J. Allen or not subject to fits of (passion) if so were they frequent or not?

A. He certainly was very impatient sometimes. He threatened to shoot his child Dorsey. I know he loved him, but he did not know what he was about.

16. Q. by Do. Could J. Allen move about without some person to lead him?

A. He could some, if he knew the place.

17. Q. by Do. Did you frequently see J. Allen () the () of the contract and before who supplied him with food and cooked?

A. Yes sir, I cooked for him. He got food from the Yankee commissary, while they were here, and also from the town authorities.

18. Q. by Do. Do you know what became of the furniture and cooking utensils () left by J. Allen at his death, if so state.

A. They were all left in the house. Mr. Stribbling had possession of the house in which they were left. There was a () bedstead three table and two () () chairs and cooking utensils.

19. Q. by Deft. counsel. What is your age?

A. I am about sixty-six.

20. Q. by same. Did you live with Allen before he died?

A. I went up every day and cooked for him.

21. Q. by same. How come Allen () say he was afraid of Stribbling?

A. He said so, but I did not pay much attention to it that was what he said.

22. Q. by same. When did Stribbling push Allen on the bed, and who was present at the time?

A. I was there and Dorsey Allen. It was when Allen was sick. I don't know that any one

else was present.

23. Q. by same. Did you ever know of Stribbling nursing Allen during sickness.

A. He gave him his medicine.

24. Q. by same. Did Betty and Dorsey take charge of and sell their fathers furniture?

A. That is a fact I don't know anything about.

25. Q. by same. Did not Dorsey tell you that he did?

A. Dorsey did not tell me anything about it.

26. Q. by plt. Did Mr. Allen die in his own house, was it in good repair or not?

A. Yes sir, he did, I know nothing about the condition of his house.

The forgoing depositions of **John Butler, Dorsey M. Allen, John E. Beck, H.M. Towles, B. Sacrey, James Allen, Fanny Allen, Dr. Wm. S. Scott, Wm. Brannan, John J. Chew, Dr. B.S. Herndon, Dr. J.G. Wallace, A.E. Samuel, R.H. Alexander, J.W. Adams** were taken sworn to and subscribed at the time and place mentioned in the () before me a Notary Public for the corporation of Fredricksburge and the county of Spotsylvania.

St Geo R. Fitzhugh
Notary Public

Notarial Fees

Engaged ten hours and thirty minutes
in taking Plfs. depositions \$7.87

Engaged in taking Defts, depositions
five hours \$3.75

I certify that I was occupied the above no. of hours in taking depositions in this case.

St Geo R.Fitzhugh
NP

ALLEN

vs.

STRIBBLING

This suit is instituted by the son and devisee of Jeremiah Allen, desc., to set aside a covenant between his father, the decedent and Geo. H. Stribbling on the ground of mental imbecility, inadequacy of consideration & fraud.

With respect to the mental imbecility of the decedent, the testimony of most intelligent and respectable witnesses is adduced to show that in their opinion his mind was so feeble and infirm that he was incapable of contractship. Other witnesses of equal intelligence and () testify the he was of capacity to contract. In my opinion this diversity of opinion is reconcilable. The decedent it appears by the evidence was subject to epileptic fits & persons conversant with this infirmity know that it (depresses) and impairs the mind during the attacks & for some time afterwards reducing the victim for a time () or () to a state really of mental imbecility. But from these affects the patient gradually recovers & may for many years except during these intervals possess his faculties, impaired in strength, it is true, but not enfeebled to imbecility. Such I infer from the testimony was the () the deceased. Persons at times saw him when his mind was weak to imbecility—his thoughts vague, wandering, disconnected—his actions perhaps violent. The next week or day, another might have seen him with mind calm & serene, not recollecting even what had occurred during these spasms., but very capable then of attending to the ordinary duties of life. That this decedent was (compus) (mentis) at the time of making this contract I am constrained to admit on the testimony of J. J Chew. He states that he was requested by Mr. Allen to prepare the original contract—that after preparing it, he read it to Mr. Allen, who suggests two alterations—one in reference to the () of lease, the other in relation to the supplying of lumber that in his interview he saw nothing to indicate that he was laboring under any mental infirmity, and that he seemed to him to be entirely (compus) (mentis)!!. This being the condition of his mind at the time of executing the contract determines in my judgment the question of his capacity.

But it is alleged that the consideration was grossly inadequate, which fact coupled with his blindness & weakness of mind establishes the fraudulent character of the deed. The consideration certainly appears at this time to be very if not grossly inadequate. The testimony is not satisfactory. Witnesses examined the premises, not in the presence of the defendant, or any one, who could point out the repairs, estimate the value of what was done. Oftentimes as much labor is () in pulling over an old structure as is repairing a new one & as much in removing the debris, as putting on the shingles or weatherboarding. The evidence then () to my mind is far from satisfactory. But viewing the subject in the most favorable light for the defendant the (consideration?) seems to have been inadequate. It was in any aspect a hard

bargain. Being a better judge of such work than Allen, who was blind, he has to all appearances made use of his superior knowledge. The Bill admits, if the work had been performed by Stribbling according to the contract it might have been of the value of \$200. This was to be () by him in the way of future rent or use. [If the work has not been done according to the contract, the remedy is on the] But the circumstances under which this contract was made were peculiar, () & (unprecedented?). Peace had not then been formally () poverty and ruin such as had never before followed in the wake of conquest surrounded the parties and enveloped the whole (country). Allen, the owner of three houses in this city, received his daily bread from the hands of the enemy; there was little or no () lasting medicine—the houses were uninhabitable. Allen could not borrow on these houses money enough to buy his bread still less to repair them. In this universal () & impoverishment might it not have been better to employ the labors of Stribbling, even at this (enormous?) price and put his houses in condition to yield rent than suffer them to remain wholly unprofitable, () to (), to the weather & consequently to decay. A contract, which now would be deemed oppressive might then have been thought expedient Assuming the consideration, however, to have been inadequate that alone will not vacate the contract.