

John H Jones

vs
Josiah J Crosby

And the defendant comes & defends the wrong & for answer to the petition of said Crosby he says that the ^{petitioner obtained the} note sued on ~~was due~~ after the same became due & rinded it subject to all just discounts against Edwin Waller the ~~holder~~ assignee thereof - & The defendant says that he has a just discount & Equity against said Waller which was created concurrently with the execution of said note & is based upon the following facts - In 1837 Defendant purchased from said Waller a tract of land in Bragoria County supposed to contain 800 acres for which he agreed to give \$6.757 & said note was given for part of this purchase money - It was further agreed that the exact number of acres in said tract should be ascertained by admeasurement & if there should be any excess or deficit it should be accounted for by adding to or deducting from the consideration ~~of said~~ ⁱⁿ proportionally to the price of the tract as above stated - The terms of said sale as just stated are contained in two instruments of writing duly executed & signed by Defendant & said Waller which are herewith filed & ~~as~~ as exhibits & prayed to taken as part of this answer - Defendant further answering avers that he has paid all said purchase money except said note for \$15 - which he has not paid & refuses

to pay the same because he has been
truly informed & so believes & avers that there
is a deficit in said tract of land of
from to acres which according
to the terms of said contract of purchase
will entitle defendant to a discount
against all or a large part of said note
The defendant further answering says
that he has not been able to ascertain
the exact number of acres in
said tract & the precise ~~deficient~~ quantity
which it wants of the 900 acres which
was to have been ascertained by him
& said Waller as aforesaid - because he says
that although he has often called on
said Waller & has employed a surveyor
& notified Waller to attend for the purpose
of measuring said ^{tract of} land & ~~ascertaining~~ finding
the deficiency therein yet said Waller
has always ~~not~~ failed & neglected to attend
or in any ^{way} assist in such admeasurement,
thereby preventing defendant from knowing
the precise amount of the ~~discrepancy~~ equity
to which he is entitled against said
Waller & his assignee the petitioner
Finally as defendant answers & the
defence therein set up are of an
equitable ~~in~~ nature he prays that
his answer may be taken as a cross
Bill or petition - that all further proceed-
ings at law in this case be enjoined &
the case ^{may be} determined according to the
principles of equity - Also that said
Waller may by proper process be made
a defendant hereto & compelled to
answer the premises on oath that

& as defendant could not trace the lines of said tract & had no means of knowing the number
of acres exactly ascertained without the aid & assistance of said Waller who by failing to attend
& always neglecting to assist therein was aforesaid

full & final justice may be rendered
between dependent petitioners &
said Walter — & to this end he prays
further prays this honorable Court
to grant & order of survey to the
proper county to ascertain value & c.
to ascertain the deficit in said tract of
land & if upon the return & estimate
thereof he it is found that he is owing
any thing he is ready & willing to pay the
same — He further prays that upon a
final hearing of this cause said Walter
may be desired to convey to him said
land by metes & bounds

Sworn to before me
the 14th Dec 1840

Jno Rice Jones

A. C. Hyde
Dep^y Clerk

No 39

J R Jones
Collector &
at St Cross Hill

J J Crosby

Recd of
J J Crosby