

1857-012 SOUTHAMPTON COUNTY  
CHANCERY PAPERS

WARREN

VS. WARREN

S/1857

other SURNAMES: Boykin,  
Cobb, Bryant

43. ~~37~~ 30.

Warren

v { Papers

Warren

1613

537

1076

260

\$1236

618

$$750 - 220 - 537$$

220

10740

1074

$$75 \overline{) 4181.40} \begin{array}{l} 55 \\ 75 \end{array}$$

431

150

Warren

2. } Stat. Rules

Warren

In Southampton Circuit Court.

William B. Warren

Plff

against.

Joseph C. Warren

Def.

1856 March 31<sup>st</sup> Sum. issued with. to April Rules.

" April Rules 7<sup>th</sup>. Sum. ret. Ex. - Bill filed - & Deere nisi in Off.

" " 28<sup>th</sup>. Bill taken for confessed & cause set for hearing 6<sup>th</sup>

" Nov. 3. Deere for act.

1857 Mar. 12 Report.

" May. 3. Deere for Plff

To the Hon Richard H. Baker, Judge of the Circuit  
Court for Southampton County.

Humbly complaining sheweth unto your  
honor, your orator, William G. Warren of the County of South-  
ampton, that Etheldred Warren, of the said County, departed  
this life in the Month of September in the year 1855, having  
previously executed his last will and Testament, which was  
duly admitted to record in the County Court of the said County, at  
the October term thereof in the year 1855; a copy of which  
said will is herewith filed (marked A) and prayed to be con-  
sidered a part of this bill.

Your orator states that the said testator, by his said  
last will and Testament, bequeathed and devised the whole of his  
slaves and real estate to his only heirs at law, to wit, to his widow,  
to his two sons, your orator and Joseph E. Warren and to his grand-  
daughter Mary E. Boykin, devising the whole of his real estate,  
(~~which was estimated, by the said testator, at~~ <sup>which is worth</sup> ~~eighteen hundred~~  
dollars and which is a ~~fact~~ valuation thereof) one third for life  
to his widow, remainder in fee to the said Joseph E. Warren, and  
the whole of the residue to the said Joseph E. Warren in fee, on con-  
dition that the said Joseph E. Warren should pay to your orator  
the sum of seven hundred and fifty dollars.

Now the said Joseph E. Warren has elected and cho-  
sen to accept the conditions imposed by the said last will  
and Testament, by taking possession of the said real estate

mentioned that is to say of all the real estate of which the said testator died seized, excepting the portion assigned by Commissioners (appointed by a decree of the county court of the said county) to the widow of the said testator, in accordance with the provisions of his said last will and testament, but refuses to pay to your orator the seven hundred and fifty dollars directed to be paid by the said Joseph E. Warren as the condition upon which the said Joseph was to be entitled to the said real estate devised to him by the said testator.

Notwithstanding ~~there~~ may appear on the first view of the said will, in the second and third clauses, a construction opposed to the claim now made by your orator, for that it may be argued that the said sum of \$750. can not be legally demanded of the said Joseph E. Warren, until after the death or marriage of the widow of the said testator, and the election of the said Joseph to accept the portion of land assigned to her under the said will or her dower, your orator is persuaded that such is not a fair, just and legal construction, and he now most solemnly declares to your honor (and is ready to do so on oath) that the claim here made by him is in pursuance of the unmistakable intention of the said testator, as revealed to your orator (as well as to the person who prepared the said will) just before the death of the said testator.\*

And as your orator is without remedy in a court of law, and is releivable only in one of equity &c he humbly prays that your honor would make the said Joseph E. Warren a party defendant to this bill and compel true and perfect answers to make to the allegations herein con-

Tained — that your honor would grant a decree against the said Joseph E. Warren for the said sum of \$750.00 with legal interest thereon from the first day of January 1856 (that being the time at which the said Joseph took possession of the said real estate) and grant such other and general relief as equity may dictate and the nature of his case may require — and as in duty bound, your orator will ever pray &c

As J. Kinder  
19

\*

Your orator specifically and expressly states to your honor, that his father, the said testator, on the day before his death, then on his death-bed and conscious of his approaching dissolution, called your orator to his bed-side alone and had a full and free conversation with him on the subject of his last will and testament, in which he expressed a desire and intention to give exactly equal shares of his estate to your orator and to the said Joseph E. Warren, stating to your orator that he considered that the remaining two thirds of his real estate (after ~~leaving~~ as he intended to do, one third for life to his wife your orator's mother) was worth fifteen hundred dollars and proposed to your orator that he, the testator, would give the said real estate to him by his, your orator's, paying the sum of \$750. to the said Joseph E. Warren, or that he would give the said real estate to the said Joseph and require him to pay that sum to your orator as your orator might prefer — To this proposition your orator replied that as he was a married man and his brother Joseph was not it would probably be better to give the land to the said Joseph as he could perhaps live more conveniently with his mother than your orator.

State of Virginia - County of Southampton - Court.

This day personally appeared before me *E. Griffin*  
a justice of the peace for said County, *Wm G. Warren* and made oath  
that the allegations contained in the within bill are true.

Given under my hand and seal this 8<sup>th</sup> day of November AD 1856.

*Lucius Griffin J.P. Seal*

1856. April 18th

Bill

*Joseph E. Warren*

*and*

*Wm G. Warren*

§ And your orator further states that there is no doubt whatever but  
that the portion of land devised to the said Joseph and of which he has already  
taken possession is worth \$1500 and your orator is conscious of  
of the fact <sup>that</sup> the said Joseph has refused that sum for that quantity of  
closure of the widow's dower in the other child.

Joanet }  
is }  
Joanet }

Warner

vs

} Ans?

Warner }

The answer of Joseph E Warner to the bill of complaint filed against him by Mrs Warner

This defendant saying & reserving for answer to the said bill or so much thereof as he is advised it is material or necessary, he should make answer unto, answering which, that it is true his father died after making his last will & testament as mentioned in the bill, and that he has elected to accept the conditions imposed by the said will; But he denies that he is in possession of the third of the land mentioned in the 2<sup>d</sup> clause of the will, which is now <sup>wholly</sup> in the possession of the life tenant, and he is advised that he is not bound to pay to the Plaintiff the said sum of \$750 until the termination of the life estate created in one third of the said land by the 1<sup>st</sup> clause in the will, and having answered he prays leave to be discharged with his costs

Montkiss & Mendenhall  
per J. J.

San Francisco Court to wit;

This day Joseph E Warner appeared before me a justice of the peace in & for the said County and made oath that the facts stated in the above are true & correct under my hand this 3<sup>d</sup> day of May 1850

Warren .....  
21 } Decree  
Warren

Novem Term '56  
To be entered  
R. H. B.

Southampton Circuit Court - November 26

William G. Warren

vs

Deceit.

Joseph E. Warren

This Cause ~~This day~~ <sup>came on to be heard</sup> ~~was heard on the~~  
bill, the answer of the defendant with the replication <sup>and exhibit</sup> thereto,  
and was argued by counsel: On consideration whereof the  
Court doth adjudge, order and decree that some one of the  
Commissioners of This Court proceed to take an account  
showing the value of the whole real estate of which ~~the~~  
said Warren died seized, <sup>the value of the portion de-</sup>  
vised to his widow for life <sup>the same being one third</sup> remainder to Joseph E. Warren  
and <sup>the value of the reversionary interest in the same</sup> the value of the portion ~~devise~~ the remaining two  
thirds <sup>desired</sup> to the said Joseph, ~~together with any matter~~  
~~deemed by him necessary to be stated~~ and whether the  
said Joseph elects to accept the provisions of the  
said will of the said testator devising to him the ~~land~~  
real estate in the proceedings mentioned including the  
remainder consequent on the termination of the life  
estate to the widow of the said testator, together with any  
matter deemed by him necessary to be stated or request-  
ed to be stated by either party; and report to this Court  
in order to a final decree.

W. L. Garrison

20 } copy of Decem

W. L. Garrison

Southampton Circuit Court, November Term, 1856.

William J. Warren

Plff

against

Joseph E. Warren

Deft

This cause this day came on to be heard on the bill, answer of the defendant with the replication thereto and exhibit and was argued by counsel. On consideration whereof the Court doth adjudge, order and decree that some one of the Commissioners of this Court proceed to take an account showing the value of the whole real estate of which Ethelred Warren died seized and professed the value of the portion devised to his widow for life the same being one third, remainder to Joseph E. Warren (and the value of the reversionary interest in the same, the value of the portion the remaining two thirds devised to the said Joseph E. Warren, and whether the said <sup>Joseph</sup> elects to accept the provisions of the will of the said testator devising to him the real estate in the proceedings mentioned including the remainder consequent on the termination of the life interest to the widow of the said testator together with any matter deemed pertinent by him necessary to be stated or requested to be stated by either party and report to this Court in order to a final decree.

Teste,

Henry S. Howard, D.C.

Warren

21 }

Warren

Deer

To be entered

L. H. Baker

May Co. 1857.

Warren

vs  $\frac{3}{4}$

Warren

Decree

This cause this day <sup>again</sup> came on to be heard on the papers formerly read <sup>together</sup> with the report of Commissioner Howard to which there being no <sup>exception</sup> ~~objection~~ <sup>filed</sup> the same is hereby confirmed: On consideration whereof the Court doth adjudge, order and decree that Joseph E. Warren pay to William G. Warren the sum of seven hundred and fifty dollars (\$750.00) with legal interest thereon from January the first AD 1857; and that each party pay his own costs: and liberty is reserved to apply hereafter to the court for any further decree to which the said Wm G. Warren may be entitled: with a view to subjecting the real estate devised to Joseph E. Warren by the last will and testament of his father Edward Warren.

✓  
Warren

7 { Sum. chg

Warren

1856 April Rules

Executed by delivering  
~~him~~ a copy of the Rules  
in 1st. apt. 1856.

Miles D. Sumner Dep.  
of S. New York.

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**THE COMMONWEALTH OF VIRGINIA :**

*To the Sheriff of Southampton County—GREETING*

We command you to summon

*Joseph E. Warren*

to appear at the Clerks office of our Circuit court of Southampton county at the Rules, to be  
holden for the said court on the first Monday in *April* next, to answer a bill in  
Chancery exhibited against *him* in our said court by

*Wm E. Warren*

And have then there this writ. WITNESS, LITTLETON R. EDWARDS, Clerk of our said  
Court at the Courthouse, this *31<sup>st</sup>* day of *March* 185*6* in the *80<sup>th</sup>*  
year of the Commonwealth.

*L R Edwards*

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Commissioner's Office

Jerusalem, January 17<sup>th</sup> 1837

To William G. Mearns, Plaintiff  
and

Joseph E. Mearns, Defendant

You are hereby notified that I have fixed upon the 21<sup>st</sup> day of February 1837, to take and settle, at my Office at the Court House "an account showing the value of the whole real estate of which E. H. Mearns died seized and possessed; - the value of the portion devised to his widow for life, the same being one third, remainder to Joseph E. Mearns and the value of the reversionary interest in the same; the value of the portion, the remaining two thirds devised to the said Jos. E. Mearns and whether the said Joseph elects to accept the provisions of the will of the said Testator devising to him the real estate in the proceedings mentioned including the remainder consequent on the termination of the life interest to the widow of the said Testator required to be taken by the decree of the Circuit Court of Southampton County rendered at the November Term 1836, in a suit in Chancery depending in said Court in which you are parties Plaintiff and Defendant; At which time & place you are required to attend.  
Given under my hand, as Commissioner in Chancery of the said Court, the day and year first aforesaid.

Samuel S. Howard, Com<sup>r</sup>.

To the Sheriff of Southampton  
County to execute

Samuel S. Howard, Com<sup>r</sup>.

Executed Feby 16<sup>th</sup> 1857 by delivering to  
W<sup>m</sup> B. Wams & Jos. E. Wams each a  
copy of the within notice.

W<sup>m</sup> E. Briggs shff

Wams  
vs  
J<sup>rs</sup> E. Wams  
Wams

Testimony of 1<sup>st</sup> 1857

Warron

vs { Examination of  
W. H. H. H. H.  
Warron

1857 Mar: 12<sup>th</sup> Returned with  
Com. Howard's report.

The examination of Leonard Cobb, Orman M. Bryant and W<sup>m</sup> D. Bryant Witnesses of lawful age, taken on the 21<sup>st</sup> day of February 1857, before Henry S. Howard one of the Commissioners in Chancery of the Circuit Court of Southampton County at the office of the said Commissioners under a decree of the said Court pronounced at the November Term 1856, in a suit in Chancery therein depending between W<sup>m</sup> E. Warran plaintiff and Joseph E. Warran defendant, to be used as evidence before the said Commissioners, touching a certain matter of account referred to the said Commissioners for settlement by the said decree.

The examinant Leonard Cobb being first duly sworn deposes and says: "I have known the tract of land of which Ethelred Warran died seized & possessed and I should suppose the total value of it to be about \$1500.00, and I should suppose the value of the third of the land which was allotted to the widow of the said Ethelred Warran died under his last will & testament to be worth as much as the balance of the land say \$750.00 that is including the Mansion house & all out houses, and the remaining two thirds of the said land devised by the said Warran to his son Joseph E. Warran I should say was worth about \$750.00."

And further this deponent saith not.  
his  
Leonard X Cobb  
mark

Sworn to and subscribed before the undersigned one of the Commissioners of the Circuit Court of Southampton County the 21<sup>st</sup> day of February 1857  
Henry S. Howard Comm.

The examinant Orman M. Bryant being first duly sworn deposes and says: I know the tract of land of which Ethelred Warran died seized and possessed and I should

Suppose the total value of it to be about \$1600.00  
and I should suppose the third of the said land which  
was allotted to the widow under the last will and  
testament of the<sup>d</sup>. Etheldred Warren dead to be about  
\$750.00 including in said lot the mansion house & all  
the out houses. And the remaining two thirds of the said  
land devised by the said Warren to his son Jos. E.  
Warren I should suppose was worth about \$850.  
00. And further this defendant saith not.

I do hereby certify that the within and Subscribed before the undersigned one of the Commis-  
 sioners of the Circuit Court of Southampton County  
 This 21<sup>st</sup> day of February 1857.  
 Henry S. Howard.

The examinant W<sup>m</sup> D. Bryant being sworn deposes and says. I have seen the land I have been on it fragmently (of which Etheldreda Waman died seized, and possessed) and I should suppose the total value of it to be \$17500 or at least \$6.00 an acre. And further this deponent saith not

Sworn to and subscribed before the undersigned one of the  
Commissioners of the Circuit Court of Southampton  
County This 27<sup>th</sup> day of February 1857  
Henry S. Howard Comm.

W. Carson

vs J. C. Carson's Report.

W. Carson

1857 Mar. 12<sup>th</sup> Returned

William G. Warren, plaintiff }  
 against } In Chancery  
 Joseph E. Warren, defendant

An account showing the value of the whole real estate of which Etheldred Warren died seized and possessed: - The value of the portion devised to his widow for life, the same being one third, remainder to Joseph E. Warren; - And the value of the reversionary interest in the same; - The value of the portion the remaining two thirds devised to the said Jos. E. Warren; and whether the said Joseph elects to accept the provisions of the will of the said Testator devolving to him the real estate in the proceedings mentioned including the remainder consequent on the termination of the life interest to the widow of the said Testator.

The Value of the whole real estate of which Etheldred Warren died seized and possessed \$ 31613.33

The Value of the portion devised to his widow for life, the same being one third remainder to Jos. E. Warren \$ 750.00  
 The value of her fee simple interest in the same \$ 527.38  
 The value of the reversionary interest in the same \$ 220.62

The Value of the portion the remaining two thirds devised to the said Joseph E. Warren \$ 863.33

The Defendants Joseph E. Warren elects to accept the provisions of the will of the said Testator devolving to him the real estate in the proceedings mentioned including the remainder consequent on the termination of the life interest to the widow of the said Testator.

Respectfully Submitted

Henry A. Howard, Coun.<sup>r</sup>

Commissioner's Office.

Janu. 7<sup>th</sup> 1857.

To the Circuit Court of Southampton County.

Pursuant to a decree of the Circuit Court of Southampton County, rendered at the November Term 1856, in a suit in Chancery depending in said Court between W<sup>m</sup> E. Warren plaintiff and Jos. E. Warren defendant, the undersigned one of the Commissioners of the said Court, to whom was referred for settlement by said decree "an account showing the value of the whole real estate of which Etheldred Warren died seized and possessed; - The value of the portion devised to his widow for life, the same being one third, remainder to Joseph E. Warren: - And the value of the reversionary interest in the same; - The value of the portion, the remaining two thirds devised to the said Jos. E. Warren, and whether the said Joseph elects to accept the provisions of the will of the said Testator devolving to him the real estate in the proceedings mentioned including the remainder consequent on the termination of the life interest to the widow of the said testator," reports to the Court, that on the 17<sup>th</sup> day of January last, he issued notices against the several parties aforesaid, requiring them to attend the settlement of the said account, before him, at his said office, on the 21<sup>st</sup> day of February 1857, which were returned to your Commissioner duly executed. That the parties aforesaid appeared before the Commissioner in obedience to the said notices, and he thereupon examined Leonard Cobb, Orman M. Bryant and W<sup>m</sup>. D. Bryant and from their evidence made up the foregoing account showing the value of the whole real estate of which Etheldred Warren died seized and possessed to be \$1613.33. The value of the portion devised to his widow for life, the same being one third remainder to Joseph E. Warren its present value \$750.00 and her fee simple interest in the same (she being a - but fifty two years of age her expectation of life would consequently be about twenty one years) \$529.08. And the value of the reversionary interest in the same to be \$220.62. The value of the portion the remaining two thirds devised to the said Jos. E. Warren to be \$863.33. And your Commissioner reports that the Defendant Joseph E. Warren elects to accept the provisions of the will of the said testator devolving to him the real

estate in the proceedings mentioned including the remainder consequent upon the termination of the life interest of the widow of the said testator.

The Commissioner further reports to the Court that after the completion of the said account he retained the same in his office ten days for the examination of the parties, which with the decree and notices aforesaid and the evidence relating thereto is herewith returned.

Given under my hand, as Commissioner aforesaid, the day and year first aforesaid.

Henry S. Howard, Com<sup>r</sup>.

Commissioner's fee \$10.00

Charged to the plaintiff

Sheriff's fees before the

Commissioner \$1.60

Leonard Cobb Witness for plaintiff \$ 50¢

Orman M. Bryant " " " 50¢

W<sup>m</sup>. D. Bryant " " " 50¢

Henry S. Howard Com<sup>r</sup>.

Esther d'ed Warrens Will

Warren

2 } Cont. with bill.

Warren

(A)

I Etheldred Warren of the County of Southampton and State of Virginia being of sound mind and memory. do make and publish this my last Will and testament in manner and form following that is to say.

- 1<sup>st</sup> I give and devise to my beloved Wife Lydia the following Slaves Viz. Moses Dinah Sophia, and Sally also one third of my land including my mansion house all out houses and other improvements, to have and to hold, during the term of her natural life or widowhood in satisfaction for, and in lieu of her dower and thirds of and in all my real estate. I also leave my said Wife one yoke of Oxen during her natural life or widowhood.
  - 2<sup>nd</sup> At the death or marriage of my said Wife my Will and desire is that the above named Slaves and their increase be equally divided between my two sons Viz. William E Warren and Joseph E Warren and the above named third of my land's &c. I give and bequeath unto my son Joseph E. Warren, by his paying to my son William E. Warren the sum of Seven hundred and fifty dollars (\$750) to him and his heirs forever.
  - 3<sup>rd</sup> I give and bequeath unto my son Joseph E. Warren all of the balance of my lands, to him and his heirs forever.
  - 4<sup>th</sup> I give and bequeath unto my grand daughter Mary E. Boykin one negro girl named Fanny.
  - 5<sup>th</sup> Should my said grand daughter Mary E. Boykin die without a lawful heir my Will and desire is that the said negro girl Fanny and her increase be divided between my above named two sons, William E Warren and Joseph E Warren.
  - 6<sup>th</sup> My will and desire is that the balance of my Slaves not above named be equally divided between my above named two sons William E. Warren, Joseph E Warren and my grand daughter Mary E. Boykin to them and their heirs forever provided however that if my above named grand daughter Mary E. Boykin should die without a lawful heir begotten of her body then and in that event, my Will and desire is, that the portions allotted to her in the division and their increase be equally divided between my two sons above named. Viz. William E Warren and Joseph E Warren.
- And lastly I do hereby constitute and appoint my beloved sons. William E Warren and Joseph E. Warren my lawful Executors to all intents and purposes to execute this my last Will and testament according to the true intent and meaning of the same and every part and clause thereof hereby revoking & declaring

utterly void all other wills and testaments by me heretofore made.

In Witness whereof I the said Etheldred Warren do hereunto set my hand and seal this 15<sup>th</sup> day of September A.D. 1855.

Signed, sealed, published and declared  
by the said Etheldred Warren to be his  
last Will and Testament in the presence of  
us who, at his request & in his presence do  
subscribe our names as witnesses thereto

Etheldred Warren (Seal)

Jos. R. Darden

Saml. D. Winborne

Augustus Crumpler

At a Court held for the County of Southampton the 15<sup>th</sup> day of October 1855.

This last Will and Testament of Etheldred Warren dec. was this day proved by the oaths of Jos. R. Darden, Saml. D. Winborne and Augustus Crumpler, the subscribing witnesses thereto and thereupon ordered to be recorded. And on the motion of Wm. G. Warren and Joseph G. Warren the Executors therein named who made oath and together with Augustus Crumpler, Saml. Kells, John Rochelle and Elijah Joyner their Securities (who justified on oath as to their sufficiency) entered into and acknowledged a bond in the penalty of Twenty five thousand dollars conditioned according to law, Certificate is granted them for obtaining a probate of the said Will in due form.

Teste

J. R. Edwards Cky

Attest

Teste

J. R. Edwards Cky