1871-060 SOUTHAMPTON COUNTY CHANCERY PAPERS

VICK and Wife et al vs. VICK et al

9/1871

other surnames: Barnes, Cutler, Story, Ellsworth, Feltz, Pully, Felts

Vicks &c
Leuter assignee &c
vs
Vicks Barnes &c

Decree

1860 Nov. Decree as filed.
1861 Jany. Report & Decree as filed.
" March 14th Report.
" March 6th Decree &c
1871. Sept. 8th. Withdrawn Bond &c

Clks fees $5 paid

To the Worshipful
County Court for Southampton County — Va.:

Your Complainants Burby Vick & wife Maria H. Vick, James Barnes & wife Caroline L. Barnes, Goodwyn D. Cutler assignee of Martha Story formerly the wife of Selah Ellsworth deceased, and assignee of Joseph H Ellsworth, William Newsom Ellsworth & Caleb Vick & wife Sarah (who was Ellsworth) respectfully represent to your Worships that the said Selah Ellsworth departed this life in the year 185 , having previously executed his last will and testament which was duly admitted to record in the clerk's office of the County Court of Southampton County on the day of Anno Domini, a copy of which is herewith filed (marked A) as part of this bill

By his said will the said testator directed that his widow (who is now the said Martha Story wife of William Story) should have the entire and exclusive use and possession for the period of her natural life, of the farm on which the said testator resided at the time of his death, together with the privilege of getting as much timber as she might think proper from the said tract of land — which said tract is commonly known as the "Knox place", and contains about three hundred and seventy one acres — and after her death the said farm was further directed to be equally divided into five shares, one of which shares was to be the property of the said Joseph H. Ellsworth — one of the said Wm A Ellsworth — one of the said Sarah Vick, the interest or profits of one share was to be paid to the said Maria H. Vick for and during her life and at her death the principle to be equally divided among the children of the said Maria Vick,

which said children are hereon after mentioned by name, and the interest or profits of the other share was to be enjoyed by the said Caroline L. Barnes in like manner for the term of her natural life and at her death the principle was to be equally divided between the children of the said Caroline who are also herein after mentioned by name

The said Goodwyn D. Leutter has purchased the entire interest of the said Martha Story, in and of the said Selah Ellsworth, in and to the said tract of land, also the entire interest of the said Joseph A. Ellsworth, William N. Ellsworth and Sarah Vick in the same and has received deeds from them severally therefor, copies of which are herewith filed as parts of this bill (marked B. C. D & E.)

Your complainants state that they are very anxious to have a division of the said tract of land, especially the said Maria ~~A~~ Vick and Caroline L. Barnes who are very poor and have but little means of support for themselves or their children, and have no income whatever from the said tract of land during the life of the said Martha Story, unless the same shall be sold ~~which~~ for a division which can be done only by the consent of the said Leutter assignee of the said Martha Story, and allowing him to take a proper and just portion in fee simple instead of his said life-estate in the life of the said Martha Story, which consent the said Leutter hereby gives.

And as such division would be impracticable in kind, your said complainants pray that the said real estate may be sold at auction, and the proceeds of sale divided and disposed of according to law and the will of the said Selah Ellsworth — that the following persons, children of the said Maria ~~A~~ Vick and Caroline L. Barnes be made parties defendant to this bill, and required to answer &c ~~and that your writs &c~~, to wit, Jane R — William H — Anthony W — Robert E — Thomas B — Milly C — Sarah Ann E — Hester F and Maria J. Vick; — Emeline R — Sarah Ann — and Susan Virginia Barnes —

And that your worships would grant such other and general relief as equity may dictate and the nature of their case may require —

and they will ever pray &c.

Jno J. Kindred P.Q.

The joint and separate answer of Jane R — William H — Anthony W — Robert E — Thomas B — Milly C — Sarah Ann E — Hester F and Maria J. Vick; — Emeline R — Sarah Ann and Susan Virginia Barnes — to a bill filed against them in the County Court of Southampton County by Goodwyn D. Leutter ~~Maria~~ Leurby Vick & Maria his wife, & James Barnes & Caroline L his wife — all of the said defendants being minors by Wm W Boyce who is hereby appointed by the Court their guardian ad litem, except the said Jane R Vick who is an adult.

The said Jane R. Vick for answer says that she has no objection to the decree prayed for and the said minors, by their guardian ad litem, say that they waive notice of the allegations made in the bill filed against them and submit their interest to the care of the Court.

and having answered the said defendants pray to be hence dismissed and their costs &c.

Jno J Kindred P.Q.

Cutler, assignee & others
vs
Vick's - Barnes's &c
Decree

This cause, this day, came on to be heard on the bill, the answer thereto and exhibits, and was argued by counsel; On Consideration whereof the Court doth adjudge, order and decree that James I. Darden who is hereby appointed a special Commissioner for the purpose, sell at public auction, having ~~previously~~ advertised the same at three or more public places in Southampton County and at the Court House door one court-day previous to the sale, the tract of land on which Selah Ellsworth resided at the time of his death, supposed to contain three hundred and seventy one acres more or less ~~and known~~ which lies near Vick's church, and is commonly known as the "Knox-place" - That he require from the Purchaser sufficient in cash to pay the expenses of the sale and of this suit, and take from him bonds, ~~with sufficient~~ personal security, in two equal annual installments ~~bearing interest from date~~ on a credit of one and two years, but bearing interest from date - and that he retain the bonds till the further order of this court - That he report to this court and return the bonds with his said report.

But this decree shall be suspended till the said Darden shall execute in the Clerk's office of this County Court of this county, bond in the penalty of Two thousand dollars payable to the Commonwealth of Virginia, conditioned for the faithful performance of this decree.

Vick &c

Copy Duerr

Vick &c

Southampton County Court. November Term 1860.

Curby Vick & others Pffs. } In Chancery

against

Jane R. William H. Anthony W. Robert E. Thomas B. Mills E. Sarah Ann E. Hester F and Maria J. Vick & Dfts }

This cause this day, came on to be heard on the bill, the answer thereto and exhibits and was argued by Counsel. On consideration whereof the Court doth adjudge, order and decree that James I. Darden who is hereby appointed a Special Commissioner for the purpose, sell at public auction, having advertised the same at three or more Public places in Southampton County and at the Court house door one Court day previous to the sale the tract of land on which Silah Ellsworth resided at the time of his death, supposed to contain three hundred and seventy one acres more or less, which lies near Vicks Church and is commonly known as the "Knox-place" — That he require from the purchaser sufficient in Cash to defray the expenses of the sale and of this suit, and take from him bonds, with sufficient personal security, in two equal annual instalments on a Credit of one and two years, but bearing interest from date — and that he retain the title till the further order of this Court — that he report to this Court and return the bonds with his report.

But this decree shall be suspended till the said Darden shall execute in the Clerks Office of the County Court of this County, bond in the penalty of Two thousand dollars payable to the Commonwealth of Virginia, conditioned for the faithful performance of this decree.

A Copy

Teste J R. Edwards Clk

G. B Noulles $1005.00

Vick &c

vs

Vick &c

Decree

1861 January 6th.

Curtright & wife & others

Against

Jane R— William A— Anthony W— Robert E— Thomas B

Milly C— Sarah Ann E— Nesta F— Maria Elick &c

This cause again came on this day on the papers formerly read and the report of the special Commissioner Dardon this day filed to which there being no objection the same is confirmed — and the Court doth adjudge, order and decree that a Commission of this Court as early hereafter may be convenient ascertain the present fee-simple value of the life estate dowed by Selah Ellsworth to his widow Martha Ellsworth in the real estate in the proceedings mentioned, the Knox land, taking into consideration the Privileges with respect to wood and timber allowed to his said widow by the will of the said Selah — and all of which said interest in the said real estate & timber the said Martha Ellsworth has granted and assigned to Geo Bryan D. Curtis —

and that the said Commissioner so ascertain the value of the said life estate &c, report to this Court in order to a final decree.

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1861 March 6t.

Carter assignee vs Ellis } March Court 1861
Ellis vs Carter } Decree

This day this cause came on again to be heard on the papers formerly read and on the report of Commissioner Howard made on the 14th March 1861, to which said report no exceptions have been filed, and was argued by Counsel, On consideration whereof the Court doth order, adjudge and decree that the said report be confirmed and that the said Commissioner James J Dorsey collect the bonds returned with his report, and that the said Commissioner allow to the obligor in said bonds, a credit; as of the same day on which said bonds mature, the sum of $769.08, and also the fifths of the balance due on said bonds; and that he pay to Maria H Ellis to be enjoyed by her for and during her life, one half of the remaining two fifths of said balance, and to Caroline L Barnes to be enjoyed by her for and during her life, the remaining half of the said two fifths, and report his proceedings to Court

Vicks do

" } Rcpt.

Vicks do

1862 Aug 7th.

I was appointed Commissioner to Sell Silas E Ellsworths Land which I did for $1005.00 The Court then directed for me to pay to Goodwin D. Cutler $769.08 for the Widows dower as he had purchased it of her then to pay him Three fifths he having bought 3 Shares then. I was to take two Bonds of one fifth each for Mariah K Vicks Children and Caroline Barnes Children. all of which I have done and now enclose the Bonds which I want to deposit in the Clerks office so as to relieve one of them. Below is Statement of the transaction

Jas. J. Darden Comr.

The Land Sold for		$1005.00
Commissions on $300- @ 5 per cent	$15.00	
" on $705 @ 2 " "	14.10	
J. J. Kinder Attys fee	50.00	
Clerks fee	5.00	
Paid Crier	2.00	
Commissioner Howards fee	15.00	
Retained for future cost	1.50	102.60
		902.40
Paid G. D. Cutler - $769.08		769.08
" same 3/5 of Balance	79.99	$133.32
	849.07	
Mariah K. Vicks Bond	26.67	
Caroline Barnes Bond	26.67	
	$902.41	

Vicky

Vicky als

SOUTHERN ARGUS PRINT, NORFOLK.

Commissioner's Office.

Jerusalem, February 10th 1861

To Riley Vick & wife, Maria A., James Barnes & wife Caroline L. Goodwyn D. Cutler, assignee of Martha Story, formerly the wife of Selah Ellsworth dec'd and assignee of Jos H. Ellsworth, Wm H. Ellsworth & Caleb Vick & Sarah his wife (who was Ellsworth) Plaintiffs

against

John R., Wm H., Anthony W., Ro. E., Thomas B., Willis C., Sarah A. E., Hester F. and Maria G. Vick and Emeline R. Sarah A. and Susan Virginia Barnes by Wm W. Briggs their guardian ad litem Defendants

YOU ARE HEREBY NOTIFIED, That I have fixed upon the 23rd day of February 1861, to take and settle, at my Office, in the Town of JERUSALEM, the following accounts: To ascertain the present fee simple value of the life estate devised by Selah Ellsworth to his widow Martha Ellsworth in the real estate in the proceedings mentioned, the "Knox Land" taking into consideration the privileges with respect to wood and timber allowed his said widow by the will of the said Selah,

Required to be taken by the decree of Southampton County Court, rendered on the 23rd day of January 1861, in a Suit in Chancery depending in said Court, in which you are parties Plaintiffs and Defendants; at which time and place you are required to attend.

GIVEN UNDER MY HAND, as Commissioner in Chancery of the said Court, the day and year first aforesaid.

Henry J. Howard, COMMISSIONER.

To the SHERIFF of Southampton County to Execute.

1861, Feby 15th Executed by delivering
to each, Kirby Vick & wife, James Barnes
& wife, Goodwyn D. Cutler assignee of Martha
Ann (formerly Ellsworth,) Jos. H. Ellsworth
Wm H. Ellsworth and Caleb Vick &
wife. and Wm W. Briggs, guardian ad
litem of Jane R., Wm H., Anthony W.
Ro. E., Thomas B., Mills C., Sarah
A. E., Hester S., and Maria L. Vick
and Emeline R., Sarah A. and Virginia
Barnes,

Sd. W. Wiseheart Shff

Depositions —

The examination of Parker D. Story & J. M. Cutler Witnesses of Lawful age, Taken on the 23rd day of February 1861, before Henry S. Howard, one of the Commissioners in Chancery of the County Court of Rockingham County, at the office of said Commissioner, under a decree of said Court, pronounced on the 22nd day of January 1861 in a suit in Chancery therein pending between Dick & wife & als plaintiffs and Dick & als defendants, to be used as evidence before the said Commissioner, touching a certain matter of account referred to the said Commissioner for settlement by the said decree.

The Witness Parker D. Story being first duly sworn deposes and says. I am acquainted with the Land lent by Silas Ellsworth to his wife Martha Ann during her life, and the land I should not think was worth more than half as much without the timber as with the timber. The land is as well timbered as such land usually is - it being piney woods land - The land with the exception of the lots around the house is poor, level and inclined to be Crawfishy land. The buildings old & very much out of repair - I should think the land without the timber was not worth more than $5000 if it is really worth that. I should think Mrs Martha Ann Story (formerly Ellsworth) is about fifty years of age.
And further this deponent saith not.

P D Story

The Witness J. M. Cutler, being first duly sworn, deposes and says. I am well acquainted with the land lent by Silas Ellsworth to his wife Martha Ann during her life, and I should not think that

it was worth more than half at the highest calculation without the timber as with the timber.
And having heard the testimony of Parker D. Story
I fully concur with him as to the nature of
the soil, buildings &c.
And further this deponent saith not.

P. W. Cutler

The foregoing Depositions were Sworn to and Subscribed
before me this 25th day of February 1861

Henry S. Howard Com.

Vick &c

vs

Vick &c

Report of Comr

1861 Janry 8th.

Carby Vick & wife & others

Against

Jane R - William H - Anthony W - Robert E - Thomas B -
Milly C - Sarah Ann E - Hester F. & Maria Vick &c

The undersigned a Special Commissioner appointed by a decree of the County Court of Southampton County at the November Term 1860, (a copy of which decree filed marked A) for report etc, respectfully States that he did after having duly advertised the land in the proceedings mentioned and in other respects complied with the said decree proceeded to sell the same at auction on the premises on the 21st day of December 1860 and by order of D. Cutler became the purchaser for the sum of One thousand & five dollars —

Amount of Sale	$1005.00	
Comrs - on $300 at 5 per ct	$15.00	
Comrs on $705. at 2 per ct	14.10	
	$29.10	
Paid Jno I Kindred Attorney	50.00	
Paid Clerk's fees	5.00	
Paid Clerk	2.00	
	$86.10	86.10
Balance		$918.90

For which the Comrs has taken from the said purchaser two bonds in the sum of $459.45 Cents each payable with sufficient security in one and two years, bearing interest from date - The said bonds are herewith filed.

James D. Darden Comr

Vicksº

vs ⅓ Cami Report

Vicksº

1861 March 14º

Account of the present fee simple value of the life estate devised by Selah Ellsworth to his widow Martha Ellsworth in the real estate in the proceedings mentioned, the "Knox Land" Taking into consideration the privileges with respect to wood and timber allowed his said widow by the will of the said Selah.

Amount of Sale of Land after deducting costs &c. of Decree & Suit. ... $903.80

Fee Simple value of Widow Martha Story formerly Ellsworth She being about fifty years of age her expectation of life is about twenty one years. allowing her for the privilege of timber and wood one half of Sale of real estate = $451.90

of the balance would be under the Tables of annuities. ... $317.18

Or ... $769.08 = $769.08

would be the whole amount she would be entitled to; Taking into consideration the privileges of timber &c.

Leaves to be divided amongst the other Legatees. ... $134.72

Respectfully Submitted

Henry S. Howard, Com.

Commissioners Office
Jerusalem, March 14th 1861.

To the County Court of Southampton County

Pursuant to a Decree of the County Court of Southampton, rendered in the 23rd day of January 1861, in a suit in Chancery depending in said Court between Vicky als plaintiffs

and Vicks, Ramesses &als Defendants, the undersigned one of the Commissioners of the said Court, to whom was referred for settlement by said decree an account to ascertain the "present fee simple Value of the life estate devised by Selah Ellsworth to his widow Marcha Ellsworth in the real estate in the proceedings mentioned the "Knox Land" taking into consideration the privileges with respect to wood and timber allowed his said widow by the will of the said Selah." reports to the Court, that on the 10th day of February 1861, he issued notices against the several parties to the suit aforesaid, requiring them to attend the settlement of the said account, before him, at his said Office on the 30th Day of February 1861. That Goodwyn D. Cutler one of the parties aforesaid appeared before the Commissioner in obedience to the said notices, and he thereupon examined Parker D. Story and J. M. Cutler witnesses and from their testimony made up the foregoing account. The Commissioner in making up the foregoing account allowed the widow as will be seen, one half of the sale of Land for her privilege of timber &c. under the will of Selah Ellsworth and then ascertained her present fee simple value of the balance according to the tables of Professor Wigglesworth, which your Commissioner has always thought gives too much to the annuitant, - but knows no other mode of ascertaining the value of a life estate or an annuity.

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

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

Henry J. Howard Com.

Commissioner's fee $15.00

I wish to get an order from the Court authorizing the Clerk of the Court to pay me my part of a Bond that is now in the Clerks office due my wife as one of the Legatees of Caroline Barnes Dec'd for the sale of Silah Ellsworths Land sold by Jas J Darden Comr. and bought by Goodwin & Butler.

The Legatees are Sarah A. Filby formerly Barnes
Rich'd W. Pully & Evaline R. Pully formerly Barnes
" " Susan V Barnes

Richard W. Pully
Witness Jesse - Dickens

Parthias Filby a
Legatee by right of my
Wife Sarah A.

Enter order authorizing the parties
to withdraw fund in bank

Selah Ellsworth's

Will

In the name of God. Amen. I Selah Ellsworth of the County of Southampton and State of Virginia do hereby make and publish this my last Will and Testament in manner and form following that is to say.

Item 1st After my decease I desire that all my just debts and funeral expences be paid out of my estate by my Executor herein after nominated

2nd I loan to my beloved wife Martha Ann for and during the term of her natural life my plantation or tract of land whereon I reside with the privilege of using and selling any of the timber thereon. I also loan to her during the said term of her natural life my negro man Fabius.

3rd After the decease of my said wife I desire that my said plantation or tract of land be sold to the highest bidder on a credit of twelve months also my said negro man Fabius on the same credit, and the money arising from the sale of said land and negro man I give and bequeath as follows. I give to my daughter Maria F. Vicks the interest on one fifth part to be paid to her annually during the term of her natural life and after her decease I give and bequeath the said fifth part of the monies aforesaid to her children to be equally divided between them. I give to my daughter Caroline L Barnes the interest on one fifth part to be paid to her annually during the term of her natural life and after her decease I give the said fifth part of the monies aforesaid to her children to be equally divided between them. The other three fifths I give and bequeath to my sons Joseph H. Ellsworth and William A Ellsworth and my daughter Sarah E Bittle, to them and their heirs forever.

Item 4th I give and bequeath all the balance of my estate to my said Children and grand children in the same proportion as mentioned in third Item herein.

5th and lastly I hereby nominate and appoint my friends Davis Barrett and Harrison P. Pope Executors of this my last Will and Testament hereby revoking and annulling all other or former Wills or Testaments by me heretofore made. In Witness whereof I have hereunto set my hand and Seal this 2nd day of May 1854.

Selah Ellsworth (Seal)

Signed Sealed and acknowledged to be the last Will and Testament of the Testator in presence of us

Thos B Worrell

Samuel Vicks

At a Court held for the County of Southampton the 13th day of July 1854 This last Will and Testament of Selah Ellsworth dec'd was this day proved by the oaths of

Thomas B Worrell and Samuel Vicks the subscribing witnesses thereto and thereupon ordered to be recorded And on the motion of Harrison B Pope one of the Executors therein named who made oath and together with Ben E Pope and George C Pope his securities entered into and acknowledged a bond in the Penalty of five thousand dollars conditioned according to law Certificate is granted him for obtaining a Probat of the said Will in due forme liberty being reserved to the other Executor therein named to join in the said Probat when he shall think fit.

Teste

S R Edwards Clk

A Copy

Teste

S R Edwards Clk

G. D. Cutler's
Bond $26.67

On Demand the 15th Day December 1862 but to carry Interest from the 15th Day of December 1860 we promise to pay to Mariah H Vicks and Children agreable to Selah Ellsworths will, or order the just Sum of Twenty six Dollars and Sixty Seven cents for their interest in the Sale of Selah Ellsworths Land sold under a decree of the Court of Southampton County for the true payment of which well and truly to be made we bind ourselves our heirs Executors and administrators Jointly and Severally firmly by these presents as witness our hands and Seals this 15th Day of February 1862

Teste

Goodwin, D. Cutler (Seal)

D. H. Cutler (Seal)

N B Cutler (Seal)

1871 Oct 16. Received the bond
referred to within of the Clerk
Pythias B. Fellows

To Majr L R Edwards —
Clerk of the County Court of Southampton

Sir: You will please de-
liver to Pythias B Felts
in the room of the Court, the
bond in the suit of said Court,
Cutler, Admr &c vs Vick & others,
made payable to Jas D Parker
Comr. for the benefit of Caroline
Barnes daughter of Silas Edwards
& executed by Goodwyn Cutler &
others for land.
And oblige yours respectfully

Witness my hand, this 3rd October 1871
Jesse Ayers, The
only surviving ascendants &
In presence of only children of Caroline Barnes
who was also deceased at the
time of her death.

William L Gray

Sarah A. Barnes. formerly Barnes Felts.
her
Sauson X D. Barnes.
mark

Lieutenant Spratt

to

Vicksburg

Com.r Bond

Know all Men by these Presents, That We James J Darden & Richard J. Darden

are held firmly bound unto the Commonwealth of Virginia, in the just and full sum of Two thousand ——— Dollars, current money of Virginia, to the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 12 day of December A. D., 1860

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound James J. Darden Commissioner appointed by a decree of the County Court of Southampton County in the suit of Vick &c. & Vick &c. at November Term 1860

shall faithfully discharge the duties of his said office or trust, according to law, then the above obligation to be void or else to remain in full force and virtue.

Signed, Sealed and delivered in the presence of the Court.

Jas. J. Darden {SEAL}

R J. Darden {SEAL}

{SEAL}

{SEAL}