1901-27 Southampton County Chancery. Whitfield, Thomas J. vs Saunders, James B. etals

division of real estate, if same
Can't be done, then Sell and divide
proceeds to those entitled.

Cutchin, Alice M.
" , J. W. (Husband)
Whitley, Charles H.
McLemore, James L. (Trustee)

Whitfield Thos. J.
vs.
Bice & Co.

Saunders et al.

1898. 2d Jany. Rules filed
L. A. Gay Clk.

To, The Honorable Robert R. Prentis, Judge of the circuit Court of Southampton, County.

In Chancery.

Complaining your Orator, Thomas J. Whitfield, showeth unto the Court the following case: That some time in the year 1889, Cordy C. Whitfield your complainants father, departed this life having first published his last will, which was duly published in the County Court of said County, at the Nov. term of the said Court 1889, a copy of which will being filed herewith as exhibit "A".

That by the 6th. clause of the said will he devised all of that certain farm known as "Monroe" lying near Monroe Ferry in the County of Southampton, adjoining the Nottoway river, and containing 327 acres, more or less, to two of his children, Davis A. and Alice M. WHitfield, equally as tenants in common, with the power to dispose of the same, but with the request that should they sell same, the proceeds arising therefrom be invested in other real estate and nothing else. That in the year 1889 Davis A. Whitfield departed this life, testate, having devised his interest in the said "Monroe" farm to his mother, Lucy J. Whitfield, as will appear by reference to a c copy of the said will herewith filed as exhibit "B"., that in this interim between the death of father and son, your complainant purchased from his sister Alice M. Cutchin her undivided one half interest in the said Monroe farm, by deed dated 3rd day of Dec. 1889, a acopy of which is herewith filed as exhibit "C".

That some time in the year 1889, the Executors of said Cordy C. Whitfield in obedience to the Third clause of the will of said de-ced cedent purchased for, and had conveyed to, said Jas. B. Saunders, and Mollie Saunders subject to the limitations as setforth in said 3RD. clause of the will, a one fourth interest in said Monroe farm, a copy of which deed is herewith filed as xhibit "D". That in said 3rd. clause of the will aforesaid, there is the following: And the Executors shall have the power to make a deed to the said devisees and

shall make it to them and their issue,and in the event of their dying without issue living then the part of the one so dying without issue living,to Thomas J.,David A., Charles C.,and Alice M. Whitfield and their issue: that said Mollie Saunders and Jas. B. Saunders had conveyed to them jointly,in pursuance of the directions of the will,a one fourth undivided interest in the "Monroe"farm,as aforesaid,after which,Mollie Saunders died,unmarried and without issue. Davis A. one of the contingent devisees of this interest of Mollie Saunders had died prior to her,and Charles C. Whitfield another of the contingent devisees died soon after she did,devising all of his property to his brother Thomas J.Whitfiled,your complainant,so that there are now only two of said devisees living,to-wit: your complainant and Alice M. Cutchin nee,Whitfield. That Davis A. having died before Mollie Saunders his interest in her estate is lost or absorbed by his death,and the other devisees take equally each one third of the interest of said Mollie Saunders,and therefore your complainant owns two thirds of said interest and Alice M.Cutchin owns one third of same,or one twenty fourth of said Monroe farm.

That James B. Saunders on the 6th day of September 1894, executed to Jas.L.McLemore,Trustee his interest in the said farm to secure a debt of $500. to C.H.Whitley as will appear by reference to the said deed filed herewith as exhibit "E". which deed has been duly recorded in the Clerk's Office of Southampton county.

Your Complainant is advised and believes that the said real estate is succeptible of partition in kind among the parties entitled thereto,but if it be not,then your orator desires that same be sold and the proceeds divided according to the several interest therein. Should the property not be devisible in kind,your complainant states and here asserts that the interest of no party will be injured by a sale of the entire tract and division of the proceeds.

In tender consideration whereof,and forasmuch as your com-

plainant is without remedy save in a court of equity,where all such matters are properly cognizable,to the end therefore that justice may be done your complainant prays that James B. Saunders,Alice M. Cutchin and J.W.Cutchin herhusband,Chas.H.Whitley and Jas.L.McLemore,Trustee may be made parties defendants to this bill and required to answer the same,that said Monroe farm may be devided in kind among the parties entitled thereto if same is practicable,but if same cannot be conveniently done,then that same be sold,and the proceeds divided according to the several interest therein ; that the Court may construe the said several clauses of the will affecting the title to the said property,and convey the same clear of limitations,or adjudge to what extent the said limitations affect their power of disposing of the same. That all such enquiries may be made orders and decrees entered,accounts taken,and all such further special and general relief granted to your complainant as the nature of his case may require or to equity may seem meet. Notice is hereby given that the Court will be asked to allow reasonable fees to plaintiffs Counsel conducting this cause.

And your complainant will ever pray &c.

Prince J McLemore. P.Q.

Whitfield Thos. J. et al.
vs. 3 Repart of
3 Sale of land.
Saunders et al.

1898 August 17th.
filed

In the Hon. Robert R. Prentis, Judge of the Circuit Court of Southampton County.

Whitfield & others,
vs. Report of Sale
Saunders &c. &c.

The undersigned, begs to report that pursuant to a decree entered in this cause on the 6th day of April 1898, he advertised the farm in the bill & proceedings mentioned known as the "Monroe Farm" which includes a small tract of 18⅓ acres, purchased from Augustus Crumpler and another small tract of 9⅓ acres purchased from Capt J. Hardee, which together make up the said Monroe farm, supposed to contain about 327 acres, it being uncertain as to just how many acres are contained in the main body of the farm, & therefore the same was sold in gross and not by the acre, and in accordance with the notices of sale, was exposed to public sale at Courtland on the 15th. day of August 1898. at which sale Thomas J. Whitfield became the purchaser by bidding therefor the sum of $3450.00 which amount he is ready to pay in full upon the confirmation of the sale by the Court.

Your Commissioner thinks the property sold for its value, there being quite a number of bidders present, and bidding upon the same - and therefore respectfully recommends that the sale be confirmed.

August 17. 1898.

Respectfully Submitted,
James S. McGhee,
Special Commissioner

For Complt. 1874.
Michalis Complt. 1879.
Ang. Complt. 1881.
J. J. Vardum 1882.

Whitfield

vs. } Copy D. A. Whitfield's Will

Saunders et als.

64. "B"

I D. A. Whitfield of Southampton Co. Va. being quite sick and being unable to sit-up, but of sound mind, do ordain and establish this as my last Will and testament.
It being the wish of my dear father, that his personal property should remain intact, and that I should provide for my mother's comfort now in order to carry out his last wish and desire, I bequeath and devise unto my beloved and kind mother, Lucy J. Whitfield, all my property of whatsoever description, whether real, personal or mixed, absolutely and wheresoever situated,
I request that my good friend and law-partner W. F. Boggess act as my executor,
Witness the following signatures and seal this the 14th. day of Feby. 1889.

Witness D. A. Whitfield (Seal)
Thos. J. Whitfield
L. L. Whitfield

Southampton County Court: March Term 1889.
A writing purporting to be the last Will and Testament of Davis A. Whitfield dec'd. was produced in Court and proved by the oaths of Thos. J. Whitfield and L. L. Whitfield. The subscribing witnesses thereto and ordered to be recorded as the true last Will and testament of the said Davis A. Whitfield dec'd.

and on motion of W. F. Boggess, the Executor therein named, who made oath according to law, and together with Thos. J. Whitfield and L. L. Whitfield as his securities, who justified on oath as to their sufficiency, entered into and acknowledged a bond in the penalty of Five thousand dollars - conditioned according to law. Which bond is ordered to be recorded. Certificate is granted the said W. F. Boggess for obtaining a probate of the said Will in due form. And on the further motion of said Executor P. D. Story, E. R. Fiers and R. T. Fiers are appointed Appraisers, who being first duly qualified, will appraise the Chattel Estate of the said decedent, and return the same under their hands as the law directs.

Tests: B. F. McLemore C. C.

A Copy.

Tests: B. F. McLemore, C. C.
Pr. W. D. C.

Whitfield Thos. J.

vs. } Copy of D of B vs. from T. J. Whitfield et al to Saunders et al

Saunders et als.

Ex. "D"

This Deed made this 31st. day of December 1889 between Thos. J. Whitfield Executor of Lordy L. Whitfield ded. of the one part and Jas. B. Saunders and Mollie A. Saunders of the other part. Witnesseth: That in pursuance and in conformity with the last Will and testament of Lordy L. Whitfield whereby his executors Thos. J. and D.A. Whitfield and as said D.A. his since died the said Thos. J. is now surviving and sole executor of Lordy L. Whitfield ded,) was directed to buy a tract of land for said Jas. B. and Mollie A. Saunders and make them a deed for it, according to the conditions and limitation of said Will The said Thos. J. Whitfield executor doth grant release and confirm unto the said Jas. B. & Mollie A. Saunders one half of the undivided interest of Alice M. Lutchin formerly Alice M. Whitfield in the "Monroe Farm" of Lordy L. Whitfield ded. the entire interest of said Alice M. Lutchin in said "Monroe Farm" being conveyed from said Alice M. Lutchin to Lucy J. Whitfield and Thos. J. Whitfield by deed bearing date 31st. day of December 1889. The said interest hereby conveyed to said Jas. B & Mollie A. Saunders being a one fourth undivided interest or part of the

"Monroe Farm of Lordy L. Whitfield dec'd. and being the interest in said farm conveyed to Thos. J. Whitfield as tenant in common with Lucy J. Whitfield by deed from Alice M. Lutchin and J. W. Lutchin her husband, said Jas. B. and Mollie A. Saunders to have & to hold said one fourth undivided interest in said "Monroe Farm" as tenant in common with Lucy J. Whitfield and to have and to hold said tract or interest according to the conditions and limitations of said Will of Lordy L. Whitfield. It is agreed if the said Jas. B. Saunders and Mollie A. Saunders at some future time desire to sell their interest in said "Monroe Farm" they may do so, and have power to convey same and invest the proceeds in real estate elsewhere if such sale and purchase be approved by said Thos. J. Whitfield or if he be dead of the Chancery Court. The said Thos. J. Whitfield Executor covenants and agrees to warrant and defend the title to said interest against the claims of all persons whatsoever to the said J. B. and Mollie Saunders and their assigns.

Witness the hands and seals of the parties the day and year first above written.

Thos. J. Whitfield (Seal)
Jas. B. Saunders (Seal)
Mollie A. Saunders (Seal)

I. J. L. Bishop a Justice of the Peace in and for the County of Southampton Virginia, do certify that Thos. J. Whitfield Executor of C. C. Whitfield dec'd. Jas. B. and Mollie A. Saunders appeared before me and upon the writing being read them by me they acknowledged the same as their act and deed.

Given under my hand this 31st. day of December 1889.

J. L. Bishop J.P.

Southampton County. In the Clerks Office Jany. 2nd 1890.

The Foregoing Deed from T. J. Whitfield to J. B. Saunders et als. was this day received and with certificate annexed admitted to record.

Teste: B. F. McLemore C.C.

A Copy.

Teste: B. F. McLemore, C.C.

Dr. W. D.C.

Whitfield Thos. J.

W. } Copy of D.J. from Saunders to Whitley

Saunders et als.

Ex. "E"

This Deed made and entered into this the 6th. day of September 1894. by & between James B. Saunders of the first part grantor, and J. L. McLemore, Trustee, and party of the second part. Witnesseth: That for and in consideration of the sum of one dollar in hand paid the receipt of which is hereby acknowledged, the said James B. Saunders the grantor, does hereby grant, bargain sell and convey with general Warranty unto the said Trustee, the following real property, to wit: All of the grantors interest of every nature and description in the farm known as "The Monroe Farm" lying in Newsoms District, Southampton County and containing by estimation about 322 acres, said interest being 1/4 undivided interest in the entire farm, which farm is bounded north by lands of J. W. Hutchin, east by Notoway River, South by lands of Geo. Bradshaw & West by Brown Pleasants; for better description of said property, reference is made to Deed of bargain & sale from Thos. J. Whitfield to the grantor recorded in D.B. #41. p. 95.

In Trust to secure the payment of one bond bearing even date with this deed, for the sum of Five Hundred Dollars due and payable January 1st. 1895 by James B. Saunders unto L.H. Whitley & bearing interest

from Sept. 6. 1894. It is agreed between the parties that in the event of a sale hereunder it shall be after 20 days public notice of the time & place and upon such terms as the said Whitley may desire & in such event the Trustee shall be entitled to the usual Commission of 5% on gross sales.

Witness the following signature & seal

James B. his x Saunders mark (Seal)

Southampton County, In the Clerks Office Sep. 6th 1894.

The foregoing Deed of Trust from James B. Saunders to L. N. Whitley, Trustee; was this day received, acknowledged in this Office by said Jas. B. Saunders and admitted to record.

Teste: B. F. McLemore C.C.

A Copy.

Teste: B. F. McLemore, C.C.
Pr. W. D.C.

Whitfield Thos. J.

vs { Copy of D of B to
from Eulalia et als
to L.J. Whitfield et als.

Saunders et als.

Exh. "6"

Record D.B. 41
Page 97.

This deed made this 31st day of December 1889 between Alice M. Lutchin and Jas. W. Lutchin her husband of one part and Lucy J. Whitfield and Thos. J. Whitfield of the other part. Witnesseth: That for and in consideration of the payment of the purchase money, at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, do hereby grant bargain, sell release and confirm to the said Lucy J. Whitfield and Thos. J. Whitfield their heirs and assigns forever, all their right, title and interest in that certain tract, or parcels of lands, being the one half undivided interest or part of the "Monroe Farm" and other real estate of Lordy L. Whitfield died, which was devised by last Will and testament of Lordy L. Whitfield to Alice M. ~~Lutchin~~ Whitfield, now Alice M. Lutchin, said "Monroe Farm" and other real estate having been devised to said Alice M. Lutchin and Davis A. Whitfield by said Will of Lordy L. Whitfield, to be held by them as Tenants in Common, and upon the death of said Davis A. Whitfield he devised his interest to his mother Lucy J. Whitfield, to said "Monroe Farm" and the other real estate, above mentioned is now held by said Alice M. Lutchin as Tenants in Common with her,

said Alice M. Lutchin and Jas. W. Lutchin her husband hereby grant release and confirm to the said Lucy J. Whitfield and Thos. J. Whitfield, their heirs and assigns forever, all their right, title and interest to said Monroe Farm and to the other real estate devised said Alice M. Lutchin, by said Will of said Lody L. Whitfield, and the said Alice M. and Jas. W. Lutchin hereby relinquish all right or interest to said "Monroe Farm" and other real estate before mentioned as devised to said Alice M. Lutchin and Davis A. Whitfield that they are or may be entitled to whether such interest be present or future, vested or contingent. The said lands devised to said Davis A. Whitfield, and Alice M. Lutchin being known as the "Monroe Farm" the "Darden land" and 18 acres of the "Geo Crumpler" Lands, and said Jas. W. Lutchin and Alice M. Lutchin hereby grant release and confirm to the said Lucy J. Whitfield and Thos. J. Whitfield all their right and interest in said lands and their appurtenances forever. And the said Alice M. Lutchin and Jas. W. Lutchin for themselves, and heirs Covenant and agree to warrant and defend the title to said tract or parcel of land, together with its appurtenances to the said Lucy J. Whitfield and Thos. J. Whitfield

their heirs and assigns forever against the claims of all persons whatsoever.

Witness the hands and seals of the grantors, the day and year first above mentioned.

Alice M. Butchin {Seal}

J. W. Butchin {Seal}

I. J. L. Bishop a Justice of the Peace in and for the County of Southampton do certify that Alice M. Butchin and Jas. W. Butchin, whose names are signed to the above deed, appeared before me in my co. and after the same was duly explained to them by me they acknowledged as their act and deed. All alterations and erasures made before the execution of this deed. Given under my hand this 31st day of December 1889.

Jas. L. Bishop J.P.

Southampton County- In the Clerks Office Jany. 2nd 1890.

The foregoing Deed from A. M. Butchin et ux to L. J. Whitfield et als was this day received and with certificate annexed admitted to record.

Teste: B. F. McLemore C.C.

A Copy.

Teste: B. F. McLemore, C. C.

Ox. W. D. C.

Whitfield Thos. J.

vs. 1st Decree

Saunders et al.

Entered, February 17-1898.

Entered page 194

Virginia:

In the Circuit Court of Southampton County, In Vacation.

February 17th. 1898.

Thomas J. Whitfield,

versus,

James B. Saunders, Alice M. Cutchin and J.W. Cutchin

Charles H. Whitley and J.L. McLemore, Trustee.

This day this cause which has regularly matured at rules, came on to be heard in Vacation upon consent of all parties given in accordance with the Statute in such cases made and provided, upon the bill and exhibits filed, bill taken for confessed as to all the defendants, and was argued by Counsel. On consideration whereof, the Court doth adjudge, order and decree that this cause be referred to one of the Commissioners of this Court, with instructions to enquire and report to Court:

1st.-------Whether the real property in the bill mentioned can be conveniently divided in any of the modes prescribed by the statute, and especially whether it can be divided in kind between the several parties entitled thereto.

2---------If the same cannot be conveniently divided in kind, whether any party will take the entire property and pay therefor to the other parties such sums of money as their interest therein may entitle them to.

3--------And, if the same cannot be conveniently divided in kind and if no party will take the entire property and pay the others for their shares, whether the interest of those who are entitled to the said property or its proceeds will be promoted by a sale of the entire property or by the allotment of part and sale of the resid-ue.

4--------The annual and simple value of said real estate and the liens thereon, if any, Which

several inquiries the said commissioner shall make and to the court report together with any matter specially stated deemed pertinent by himself or required by any party to be so stated.

To the Clerk of the Circuit
Court of Southampton County.

Robert R. Ellis

To, L.A.Gay, Clerk of the Circuit Court of Southampton County.

I hereby certify that in the chancery cause of Thos.J.Whitfield vs, James.B.Saunders et als. consent was given in writing by the parties thereto in vacation that the said cause be submitted to the Judge of the said Circuit Court in Vacation for such decision and decree therein to be entered, as might be made in term.

Given under my hand this 17th. day of February 1898.

Robert R. Ellis

Whitfield Thos. J.

vs. Sum. in Eject.

Saunders et als.

1898. 2nd Jany. Rules

Lein Ct.

Executed Jany 13th 1898 by delivering a copy of the Sum to J.W. Mulkin and a copy to Alice McCutchin

J.W. Williams
Dpty

(2)

Prince & McLemore p.q.

We acknowledge due & legal service of this Summons

C.W. Hickey by J.W. Mulkin his Atty

J.T. McLemore, Jr. atty.

James D. Saunders by

D. Livingston Atty

# THE COMMONWEALTH OF VIRGINIA,

**To the Sheriff of Southampton County--Greeting:**

We command you to summon James B. Saunders, Alice M. Gretchen and J. W. Gretchen, Charles H. Whitley and J. L. McLemore, Trustees.

to appear at the Clerk's Office of our Circuit Court of Southampton county, at the Rules to be holden for the said Court on the 3rd Monday in Jany. 1898 ~~next~~, to answer a bill in Chancery exhibited against them in our said Court by Thomas J. Whitfield

And this ~~they~~ shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, L. A. GAY, Clerk of our said Court, at the Courthouse, this 12th day of January, 1898, in the 122nd year of the Commonwealth.

Teste: L. A. Gay C. C.

Thos. J Whitfield C N Whitley, Jas B Saunders & L W McLemore Trustees,

We, Alice M. Cutchin and J. W. Cutchin, hereby consent that the Chancery cause of Thos. J. Whitfield et als, vs. James B. Saunders and others may be submitted to the Judge of the Circuit Court of Southampton County, in Vacation for such decision and decree therein an vacation, as might be made in term.

Feb. 8, 1898.

J. W. Cutchin

Alice M. Cutchin

C N Whitley and James B Saunders by L W McLemore Atty

L W McLemore, Trustee

Thos J Whitfield by L W McLemore att.

Thomas J. Whitfield ..... Plaintiff...

AGAINST

James B. Saunders ex als ..... Defendant.s.

} In Chancery.

I, ~~T. M. HOWARD~~ L. A. Gay, Clerk of the Circuit Court of Southampton County, Virginia, do certify that bond as required under a decree of sale in the above style cause, entered on the 6th day of April 1898, has been executed with security deemed sufficient by me.

Given under my hand this 18th day of June 1898.

L. A. Gay C. C.

Form No. 309.

Whitfield
vs
Sanders et als.

McLemore

to } COMMISSIONER'S BOND.

Commonwealth.

1898. July 18. Filed

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 309.

Know all men by these Presents, That we, J. L. McLemore and J. B. Prince are held and firmly bound unto the Commonwealth of Virginia, in the sum of Thirty five Hundred ~~~~~ Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our Homestead Exemptions as to this obligation, and any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office. post or trust, with coupons detached from bonds of this State. Sealed with our seals, and dated this 18th day of July one thousand eight hundred and ninety eight.

The Condition of the above Obligation is such, That if the above bound J. L. McLemore shall faithfully perform the duties of his office or trust, as Special Commissioner under a decree of the Circuit Court of the County of Southampton pronounced on the 6th day of April, 1898, in the suit therein depending under the name and style of Whitfield & Saunders et. als. and any future decree which may be entered in said cause

then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and acknowledged in the presence of

Jas. L. McLemore, SEAL.

J. B. Prince SEAL.

SEAL.

*In the Clerk's Office of the* Circuit *Court of the* County *of* Southampton.

This day J. B. Prince surety on the above bond, made oath before me, L. A. Gay Clerk of the Circuit Court of the County of Southampton that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expect to have to pay, is worth the sum of thirty five Hundred ~~~~ dollars.

Given under my hand this 18th day of July, 1898.

Teste: L. A. Gay Clerk.

By B. F. McLemore D.C.

OFFICE OF
JOHN N. SEBRELL, JR.
ATTORNEY AT LAW.

NOTARY PUBLIC.

COURTLAND, VA., Sept. 8th 1898

J.L.McLemore, Esq.,
Suffolk, Va.,
My dear Jim:-

I have seen Cutchin in person and find that he has no objection to the sale of the "Monroe Farm" at the price at which it was # sold and is willing to sign the deed. He ofcourse expects the payment of the money due his wife as one of the heirs of Mollie Saunders deceased to his wife. In looking over the wills of Cordy C.Whitfield,D.A. Whitfield and Lucy J.Whitfield I find the following state of facts: Cordy Whitfield devises his "Monroe Farm" to D.A.Whitfield and Alice M. Whitfield,now Cutchin. D.A.Whitfield devises and bequeaths all his property of every kind to Lucy J.Whitfield. And Lucy J.Whitfield bequeaths to Alice M.Cutchin the sum of one hundred dollars,and after making other bequests,devises and bequeaths the remainder of her property (which remainder includes the interest in the Monroe Farm devised to her by D.A. Whitfield) to Thos.J & Chas.C.Whitfield. Thos. J.Whitfield is left as executor in this will. The bequest of one hundred dollars to Alice M. Cutchin has never been paid her by the executor, and since is would be a charge on the Monroe Farm in case there is not sufficient personal property with which to pay same, she does not feel like conveying all # her interest in the same, except upon condition that the said bequest is paid her. In accordance with her request I therefore send deed properly acknowledged to be held by you as an escrow and to be delivered to the grantee named therein when he shall pay you the money due Mrs. Cutchin as heir of Mollie Saunders and the legacy bequeathed to her in the will of Lucy J.Whitfield. Should there be any objections to these conditions you can notify me at once. I can conceive of no objection which would be reasonable. After collecting the money mentioned above you can send same to either Cutchin or my self.

Yours very truly,

Jno. Sebrell Jr.

Whitfield Thos. S.

vs. } Statement of Rules.

Saunders et als.

Thomas J. Whitfield Plaintiff

vs.

James B. Saunders, Alice M. Cutchen and J.W. Cutchen, Charles K. Whitley and J.L. McLemore, Jr. Defendants } In Chancery.

1898. 12th January. Process Issd to 2nd. Jany. Rules.

1898. 2nd Jany. Rules. Process returned executed.

Bill & Exhibits Filed.

Decree nisi vs. defendants.

1898. 1st Feby. Rules. Bill Taken for confessed and cause set for hearing.

Virginia:

In the Circuit Court of Southampton County, In Vacation, February 17th, 1898

Thomas J. Whitfield,

Versus,

James B. Saunders, Alice M. Lutchin and J. M. Lutchin
Charles H. Whitley and J. L. McLemore, Trustee,

This day this cause which has regularly matured at rules, came on to be heard in vacation upon consent of all parties given in accordance with the Statute in such cases made and provided: upon the bill and exhibits filed, bill taken for confessed as to all the defendants, and was argued by Counsel, On Consideration whereof, the Court doth adjudge, order and decree that this cause be referred to one of the Commissioners of this Court with instructions to enquire and report to Court:

1st. Whether the real property in the bill mentioned can be conveniently divided in any of the modes prescribed by the Statute, and especially whether it can be divided in kind between the several parties entitled thereto.

2nd. If the same cannot be conveniently divided in kind, whether any party will take the entire property and pay therefor to the

other parties such sums of money as their interest therein may entitle them to.

3rd. And if the same cannot be conveniently divided in kind and if no party will take the entire property and pay the others for their shares, whether the interest of those who are entitled to the said property or its proceeds will be promoted by a sale of the entire property or by the allotment of part and sale of the residue.

4th. The annual and fee simple value of said real estate and the liens thereon, if any. Which several enquiries the said Commissioner shall make and to the Court report together with any matter specially stated deemed pertinent by himself or required by any party to be so stated.

A Copy.

Teste: L. A. Gay C.C.

We acknowledge due legal service of this notice.
March 16/1898.

Thos J. Whitfield
Jas B. Saunders
Chas H Whitley
Alice M Culchin
J.W. Culchin
J L & W Lemon, Trustees

by J L & W Lemon Att'y

Whitfield
vs
Reed.
Saunders, Alb:
1898. Mch 24

Commissioner's Office,

Courtland.

~~Jerusalem~~, Va., Mch 16 1888

To Thos. J. Whitfield

Jas. B. Saunders - Alice M. Cutchins &

J. W. Cutchins - Chas. H. Whitley and

J. L. McLemore, Trustees

You are hereby notified that I have fixed upon the 24th day of March next, if fair, if not, the next fair day thereafter (Sunday excepted), to take and settle, at my office, the following accounts, to wit:

1st Whether the property in the bill mentioned can be divided in kind among the parties entitled thereto, in any of the modes prescribed by law.

2nd If it cannot be divided in kind. Whether any party will take the entire property, and pay therefor to the other parties such sums of money as their interest therein may entitle them to.

3rd If the same cannot be divided in kind, and if no party will take the entire property, and pay the others for their shares. Whether the interest of the parties will be promoted by a sale of the entire property, or by sale of part and allotment of residue.

4th The Annual & fee simple value of the said real Estate, and the liens thereon.

required to be taken by a decree of Southampton Circuit Court, rendered ~~at~~ the 17th day of Feby. ~~term~~, 1888, 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 said Court, the day and year first aforesaid.

B. J. McLemore

Commissioner.

To the Sheriff of Southampton County to execute.

Whitfield

vs } Report.

Saunders et. als

1898. Mch 24. filed.

Commissioner's Office.
Courtland, Va.
March 24th. 1898.

To the Circuit Court of Southampton Co.

Pursuant to a decree of the Circuit Court of the County aforesaid entered in Vacation, on the 17th day of February 1898. in the Cause of Whitfield & Saunders, et. als: the undersigned Commissioner issued Notice against the parties to the suit informing them that he had fixed upon the 24th day of March 1898. as the time and his office in Courtland, as the place for taking the accounts required by the aforesaid decree. that legal service of said Notice has been acknowledged by Counsel. and is herewith filed. that none of the parties appeared before the Commissioner. Whereupon the Commissioner after examining the papers in said Cause. and the records of the Clerks Office of this County. (the only sources from which he could obtain information) submits the following report:-

1st That the land in the bill and proceedings mentioned. Cannot be divided in Kind among the parties entitled thereto. for reasons which are plainly set forth in the Plaintiffs bill.

2d. That no party interested has offered to take the

entire subject matter or any part thereof - and pay a reasonable price therefor to the other interested party.

3rd That in the opinion of the Commissioner the interest of all parties will be promoted by a sale of the whole tract - and division of the proceeds among said parties according to their respective rights.

4th The fee simple value of the real estate in the bill and proceedings mentioned is estimated at $3000.00 And the Annual value at $180.00

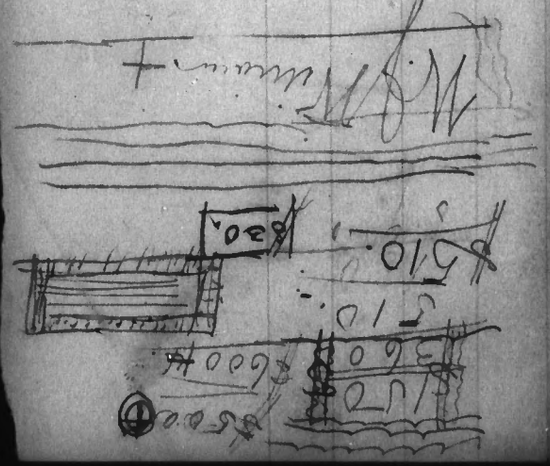
Respectfully Submitted.

B. F. McLemore

Comr in Chancery.

Commrs fee $10.

Whitfield
v. —
Saunders et als.



Lucy J. Whitfield & Exor. qualified Nov. Term 1895. As soon as he can conveniently collect the same out of my estate & pay the $100.

| | | | |
|---|---|---|---|
| Amo of Sales | | | $34.50. |
| Costs on Same | 15.00 | 63. | 78.00 |
| Posters | | | 2.50 |
| Cries. | | | 10. |
| Deed | | | 10. |
| Court Costs & Comrs fee | | | 42. |
| ~~Tax~~ allowed by Court | | | 50. |
| Future Cost | | | 5. |
| | | | 187.00 |
| | | | 32 |
| Pd Mrs Alice Ashburn Jr. | | | $136.00 |

3 . .

Whitfield Thos. J. et als.
vs. } Statement of Costs
Saunders et als.

Sum. 25¢, 5 Copies 65¢, recpt 15, atty. 10. Docket 18= 1.38

Rules 1st Cy, Entering return 35¢ filing bill 15= 1.50

Do Exhibits 5= 25¢ Copy Ext. 60 Cy fil. Comrs report 25= 6.50

fil. Special Comrs report 15¢ Taking Comrs bond 1st Cy= 1.55

3 Decrees @ Copy 1.44 replication 15¢ Taking Cost 40= 1.99

filing away papers 25¢ Future Costs 2.00= 2.25

Paid L. A. Gay Clerk $15.15

Wm. Sheriff. Paid 2.50

Comrs, B.F.M. Paid 10.00

P. & McLemore " 16.50

$44.15

Thomas J. Whitfield

vs. ~~Decree~~

Jas. B. Saunders et als.

This day this cause came on again to be heard upon the papers formerly read and upon the report of Commissioner B. F. McLemore, filed March 24th. 1898, to which no exceptions have been taken, and was argued by Counsel.

On consideration whereof, ~~and it appearing to the Court upon the said report that the land in the Bill of proceedings mentioned known as "Monroe" cannot be conveniently partitioned in kind in any apt mode prescribed by the Statute;~~ and being of the opinion that the parties to this suit the several owners of the interests which together make up the "Monroe" farm, own the same in fee simple, with full power of alienation and that all limitations attempted to be imposed upon the said several interests by the last will of Cordy C. Whitfield deed in restraint of the diverse power of alienation are inoperative and void. Doth adjudge, order and decree that J. L. McLemore and J. B. Sumner be and they are hereby appointed Special Commissioners, either of whom may act, to make sale of the said "Monroe" farm. who after having duly advertised the time place and terms thereof for twenty days, expose to public

sale the said Monroe farm containing 322 acres, at Courtland Va, and upon the following terms to-wit: One third cash, the remainder upon a credit of One & two years, equal installments, taking from the purchaser bond with approved security, carrying interest from date of sale, and title to be retained till all of the purchase money is paid, with option to the purchaser to pay all of the purchase money in cash and take a deed upon the confirmation of the sale by the Court, and the rent of the farm for the year 1898. to pass to the purchaser.

But before the said Commissioners or Commissioners shall proceed to sell hereunder they or one of them shall enter into bond before the Clerk of this Court in the penalty of $3500. with approved security, conditioned for the faithful performance of this or any future decree that might be entered herein. And said Commissioners will report to Court. ~~But~~ This decree is however made on condition that the parties plaintiff and defendants unite with said Commissioners in the sale and conveyance of the said land. —

Entered 1898 April 6th
Robt. P. Rives

Mitchell
vs
Saunders et al.

Whitfield Thos J. et al

vs

Decree

Saunders et al

Entered August 26th 1898.

Robert C. Ellis

Ent'd Page 221

2

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Filed Aug 26 1898

Virginia, In vacation, in the circuit court of Southampton county.

August 26th. 1898.

Thomas J. Whitfield et als.

vs.

Jas.B.Saunders et als.

This day this cause came on again to be heard, in vacation, upon the papers formerly read, upon the report of special commissioner, Jas.L.McLemore, filed August 17th. 1898, reporting the sale of the land in the bill mentioned to Thomas J.Whitfield for the sum of $3450. to which report no exceptions have been taken, ~~upon due and legal notice of plaintiffS intention to apply for this decree given to all parties hereto including the purchaser~~, and was argued by Counsel.

On consideration whereof, the Court doth confirm the said report and the sale as therein reported, and doth adjudge order and decree, that the sale to said Thomas J.Whitfield be made firm and binding, and upon his paying the entire purchase price in cash, the said Special Commissioner is hereby directed to execute to him a ~~de~~ deed with special warranty, in accordance with a prior decree entered herein April 6th. 1898, and of the funds in his hands, after paying the costs of this suit including an additional fee of $50. to plaintiffs Counsel, and the expenses of the sale, distribute as follows: One fourth to Jas.B.Saunders, out of which pay off the deed of Trust due to C.H.Whitley, or as far as same will go in that direction; One twenty fourth to Alice M. Cutchins, and the remainder to Thomas J. Whitfield, taking their receipts therefor, and report to Court.

Robert R. Travis

I the Clerk of the Circuit Court of Southampton County.

WHITFIELD

VS DECREE

SAUNDERS et als.

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Entered Oct. 8, 1900

Robert C. Stiles

Entered 2

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WHITFIELD

VS

SAUNDERS et als.

This day this cause came on again to be heard upon the ppers formerly read, and upon the report of special commissioner James L.McLemore filed this day reporting collection of the funds from sale of the Monroe Farm and disbursements of same supported by proper vouchers to which report no exceptions have been taken and was argued by counsel.

On consideration whereof the court doth confirm the said report and the deed as therein reported made to T.J.Whitfield for the Monroe Farm, and doth further adjudge, order and decree that that part of the decree of August 26th,1898 which reads as follows; "1/4 to James B.Saunders, out of which to pay off deed of trust due to C.H.Whitley, or as far as same will go in that direction" be amended and corrected so as to read as follows; "1/8 to James B. Saunders out of which to pay off deed of trust due to C.H.Whitley or as far as same will go in that direction", it appearing to the court that the word "fourth" instead of "eighth" was inserted through error and inadvertently. And nothing further remaining to be done in this cause, it is ordered that same be ~~dismissed~~ stricken from the docket.

Whitfield Thos. J.

No. 33 Report of Special Comm.

Saunders et al.

~~April~~ 1901. Octo. 8. fel

Special Commissioner.

---3---

of the entire farm, and that he has settled with said Saunders upon this basis. He would state further that there was a deed of trust upon the interest of James E.Saunders in this property due to C.and H.Whitley for $343.04, which amount would naturally be ca-

To the Hon. R. R. Prentis, Judge of the Circuit Court of Southampton County.

Whitfield vs Saunders et als.

The undersigned who was appointed special commissioner in the above mentioned cause to make sale of the real estate therein mentioned and collect the proceeds therefrom, begs to report that in accordance with decree entered August 26th,1898, he collected from Thomas J.Whitfield the sum of $3450., the purchase price for said real estate, and has made to him a deed for same with special warranty. That he has disposed of same in his hands as follows;

| | | |
|---|---|---|
| Amount received from sale of the land | | $3450.00 |
| Commissions on same | $78.00 | |
| Pd. for posters | 2.50 | |
| Deed to purchaser | 10.00 | |
| Pd. Court cost and Com'r's.fee | 44.15 | |
| Fee allowed Attorney by the court | 50.00 | |
| Retained to pay future cost | 3.16 | $ 187.81 |
| Making total | $187.81 | $3262.19 |

| | | |
|---|---|---|
| Balance in hand to be distributed | | $3262.19 |
| 1/24 of same to Alice M.Cutchin | $136. | |
| 1/8 to James B.Saunders | 407.69 | |
| Remainder to Thos.J.Whitfield | 2718.50 | |
| | $3262.19 | |

Vouchers herewith filed.

Your commissioner states specially that in the decree of August 26th,1898, it was by error stated therein that James B. Saunders should be paid one fourth (1/4) of the proceeds from the Monroe farm, when same should have been one fourth (1/4) of the half originally conveyed to him and his sister, or one eighth (1/8)

of the entire farm, and that he has settled with said Saunders upon this basis. He would state farther that there was a deed of trust upon the interest of James B.Saunders in this property due to Charles H.Whitley for $343.64, which amount would naturally be deducted from his interest of $407.64, but at request of Thomas J. Whitfield $203.00 of said amount due to Charles H.Whitley was paid by him, Thomas J.Whitfield, leaving $140.64 to be paid by said Saunders on the deed of trust, and would leave therefore to be paid to Saunders out of the funds in the commissioner's hands $272.05, which amount was paid, as is evidenced by receipt of James B.Saunders filed with this report. It will also appear by reference to Thomas J.Whitfield's receipt that the settlement of the C.H.Whitley debt from the basis just above mentioned was agreed to by him, all of which is respectfully submitted.

Jas L.McLemore

Special Commissioner.

Rec'd Octo. 8th. 1898, of J. L. McLemore
Special Commissioner in case of Thos. J. Whitfield
vs. Saunders et al. the sum of $672.00 in full
of my share in sale of Munroe farm. ~~and $436.00 in~~
~~full of my [illegible] share in same making total of~~
~~$1108.00~~

Witness:

Carroll Wright

J. D. Saunders

Recd Octs. 8th. 1898. of J. L. McLemore Special Commissioner in Chancery cause of Thos J. Whitfield vs Saunders etals. the sum of $2718.50, same being my share in sale of Monroe farm. in full.

Thos J. Whitfield

Also recd. of said Commissioner $136.00 same being in full of my share in the interest of Mollie J Saunders dec'd. in proceeds of Monroe farm.

Octs 8. 1898.

Thos J. Whitfield

$136.20

Received Sept. 10th 1898 of Jas. L. McLemore, Sp. Comr in chancery suit of Whitfield vs. Saunders et als. in Circuit court of Southampton County One hundred & thirty six Dollars, being one twenty fourth of $3262.50 to be paid Alice M. Culchin as per decree of Aug. 26th 1898.

Jno. Letcher Jr.
Atty for Alice M. Culchin

We, Alice M.Cutchin and Thomas J.Whitfield, parties to the suit of Whitfield et als. vs, Saunders et als hereby authorize Jas.L.McLemore, special Commissioner in said cause to pay out of any funds in his hands in which James B.Saunders may be interested, so much as may be necessary to pay off and discharge the debt due to Charles H. Whitley, and any remainder in his hands after paying off said debt, the said Commissioner can in so far as we are concerned or interested, pay over to said James B.Saunders or his assigns.
Given under our hands this 22nd.day of September 1898.

Alice M. Cutchin
Thos J. Whitfield

$10.00

Rec'd Sept. 17. 1898, of J. L. McLemore
Spec'l Com'r ten dollars, Commissioner's fee
in suit of Whitfield v Samuels et. als:

D. F. McLemore
Com'r in Chancy

Also pd. Clerk same day. $1.00

September /14th.1898. Received of Jas.L.McLemore,special commissioner in the Chancery cause of Whitfield et als,vs, Saunders et als. the sum of $343.64 ,in full of amount due me by Jas.B.Saunders by deed of Trust duly recorded in the Clerk's Office of Southampton County,and I heeby agree to release the lienof the said deed of trust immediately.

$343.64
---

C H Whitley

Sign & return to me-