

1903-05

Southampton County Chancery - Britt, W.C. vs Britt, H.A. (et al.)

to determine & construe
a section of a will

Britt, Robert E.

" , J.T.

" , Julia M.

" , Isaac W.

Bristol, W.C.

v. $\frac{1}{2}$ Bice of Camp ^{+ 8x} ~~plains~~ ^{hills} to
Bristol et als -

J. M. Rice & Son
12.

To the Honorable Robert R. Prentiss, Judge of the Circuit Court
of Southampton County, Virginia.

----- In Chancery -----

Humbly complaining sheweth unto your Honor, your complainant, W.C.Britt, as follows:-

That under the will of Lue Edna Whitley, which was admitted to probate on the 20th day of the October 1879 term by the County Court of Southampton County, the said testatrix uses the following language in Sec. 1 of her will:-

" I give and bequath to W.C.Britt, son of Henry M.Britt, and his wife the plantation in Southampton county, Virginia, called the Mill plantation, joining the lands of O.M.Bryant, Jonathan Britt and others, to him and his heirs in fee simple forever," as will more fully appear from a copy of said will herewith filed, marked "Exhibit A" as a part of this bill. That the wife of the said W.C.Britt died before the said Whitley, and left the following children, who are also the children of your complainant, to-wit: H.A.Britt, Robert E.Britt, F.T.Britt, Julia M.Britt and Isaac M.Britt, all of whom are adults. ~~That under the statute of Virginia~~ See.

*****~~V.C.B.*N.S.D.*H.A.T.G.*D.I.O.*B.F.R.~~ Mrs. Britt having died before the testatrix, the devise to her would have lapsed, but under Sec. 2523 of the Code of Virginia it is provided that " If a devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof be made or required by the will." That the use of the expression in the said will, "to him and his heirs, in fee simple forever" has created a doubt as to what she really meant in the devise, whether

she meant to give the whole of the farm to W.C.Britt, ~~***~~
in fee, or only one half in fee, and there is also a doubt as to
what estate she intended to give to the wife of W.C.Britt,
and your complainant is not able to dispose of this property
to any advantage on account of these doubts. Your complainant
is, therefore, compelled to ask a Court of Equity to determine
and construe the real meaning of the said section.

In tender consideration whereof and inasmuch as your
complainant 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, he prays that H.A.Britt, Robert E.
Britt, F.T.Britt, Julia M.Britt and Isaac W.Britt may be made
parties defendants to this bill and compelled to answer the
same, though answers under oath are hereby expressly waived.
That Your Honor will construe the true meaning of the section
in question, and that Your Honor will grant all such other,
further, general and special relief as to equity shall seem
meet, or the nature of the case may require.

And as in duty bound &c. May it please the
Court &c.

f.c.

Britt M. L.

vs { Copy of Will of ^{Whitney} Lane Edg.

Brett et als. Ex. "R."

In the name of God. Amen; I, Isaac Edney Whitley of the County of Southampton and State of Virginia, being of sound mind and memory, do make and publish this my last will & Testament in manner and of form, following. That is to say.

1st I give and bequeath To William B. Brill the Son of Henry M. Brill and his wife the plantation in Southampton County, Virginia, called the Mill plantation joining the Lands of O. M. Bryant, Jonathan Brill & others To him and to his heirs in fee Simple forever.

2nd I leave the plantation in Hertford County, North Carolina called the Wiggins & Sallee Whitley plantations to be sold, and the proceeds to be disposed of in the following manner.

3rd I give to the Trustees of New Hope Church Two Hundred Dollars \$200.00 To be applied for the benefit of that Church in any way they the Trustees may think best, and of the proceeds of these two Tracts of Land named above and the balance of the proceeds of said Lands to be equally divided between, Eliza E. Whitley, Minna Hilliam, wife of Thomas Hilliam, Elizabeth Whitley, wife of David Whitley, decd, and Parvina Hadbath wife of John Hadbath to them and their heirs forever.

4th I give devise To Sallee Jane Whitley

Daughter of Robert Williams died, and David
Williams her brother ^{the said} the son of Robert
Williams died. the plantation in Southampton
County Virginia, called the Shanky or
Williams plantation joining the Lands of
L. F. Lee, James Glover, and the heirs of Joseph
Brill died, to be equally divided between them.
In case of the death of the above named Sallie
Jane Williams, without a lawful heir begotten
of her body, then and in that event, I desire all
of the said Land or value of the same to her brother
David Williams, son of Robert Williams, died.
& in the event that he, the said David Williams,
shall die without a lawful heir begotten of his body,
my desire is that the said Land be given to his
Sister Sallie Jane Williams, the daughter of Robert
Williams died, & in the event that both the said
David Williams & his Sister Sallie Jane Williams,
die without a lawful heir begotten of their bodies
my Will is that the ^{said} Tract of Land be given to my
Sister Margaret Brill wife of Henry M. Brill
to her and to heirs in fee simple, forever.

I. I. give and devise to Sallie Jane Williams
daughter of Robert Williams died, all of my
Bonds & Money I may have on hand at my
death and in case of the death of the above named
Sallie Jane Williams without a lawful heir
begotten of her body, then and in that event I devise
said Bonds & Money to her brother David Williams

son of Robert Williams dead, and in the event that the said David Williams shall die without a lawful heir begotten of his body, then my will is that the said bonds & money to be given to my Sister Margarette Brill, wife Henry M. Brill, to her and to her heirs forever.

6th I give and devise to my Sister Margarette Brill wife of Henry M. Brill & the above named Sallie J. Williams, Daughter of Robert Williams dead, all of my Households and and other property not above enumerated to be equally divided between them, and in the event of the death of the said Sallie Jane Williams, without a lawful heir begotten of her body, then the whole to be given to my Sister, Margarette Brill, wife of Henry M. Brill, to her and to her heirs forever.

7th I do hereby Constitute & appoint my friend O. M. Bryant, my Lawful Executor to execute this my last Will and Testament, according to the true intent & meaning of the same, hereby revoking all other Wills heretofore made by me. Lastly it is my will that my friend O. M. Bryant shall take charge of and qualify on this my last Will and Testament, without giving any security. In witness whereof I the said John Edmnd Whitley do hereby set my hand & seal, this 26th day of November 1894

John Edmnd Whitley *(Seal)*

Signed sealed and published

before us, who at her request

Subscribed our names, as witnesses.

Just:

W. R. Hart

R. B. Bryant

At a Court held for the County of Southampton,
at the Court House thereof, on Monday the 20th day
of October A.D. 1879.

The Last will & Testament of Lou Edney Whitley
was partly proved by the oath of R. B. Bryant
one of the subscribing witnesses thereto, and
continued for further proof. And at a Court
held for said County on the 17th day of
November A.D. 1879, the following entry
was made, At the October Term 1879, of the
County Court of Southampton R. B. Bryant
One of the subscribing witnesses to the Will
of said Lou Edney Whitley, having been
first duly sworn says that he and W. R. Hart,
signed the Will of Lou Edney Whitley as
Witnesses together in her presence and ^{at} her
request. She having acknowledged the
same to be her Will to us, and being of sound
mind, and at the November Term 1879 of the
said County Court the other subscribing
witness W. R. Hart having been duly sworn
says that he and R. B. Bryant signed the
Will of Lou Edney Whitley as witnesses
together in her presence and at her request.

She having acknowledged the same to be
her will to us present together, and being
of sound mind; Whereupon, the said
writing is ordered to be recorded as the
last will and Testament of the said Lou Edny
Whitely dead. And on the motion of
Orman M. Bryant the executor therein named,
who made oath according to law, and entered
into and acknowledged a Bond in the penalty
of Three hundred Dollars, Conditioned as the law
directs. (last without Security, the will directing
that none should be required, and the
Court requiring none,) which bond is ordered
to be recorded - Certificate is granted the said
Orman M. Bryant for obtaining a probate of
the said Will in due form.

Teste:

L. R. Edwards G. G.

A Copy.

Teste: L. R. Gay D.C.

Brill W. C.

vs. } Statement of Rules

Brill et als.

W. L. Britt Plaintiff

vs.

H. A. Britt, Robert E. Britt,
F. T. Britt, Julia M. Britt
and Isaac W. Britt.

Defendants

In Chancery

1902. 29. August. Process issued To 2^d Sept. Rules.

Affidavit as to non-residence

filed. Order publication issued

1902. 2nd Sept. Rules. Process returned executed.

Bill and exhibits filed

Deere nisi

1902 3rd Sept. Rules, Bill taken for confessed.

^{Completed}
Order publication, and

Cause set for hearing

Britt, W.C.,

v. $\{$ ~~Seaman~~

Britt et al.

In action

Jan. 1903

Enter this -

Circuit Court of the County of Southampton, In Vacation, the day
of January, 1903.

Britt, W.C.,

vs.

Britt et als.

This day this cause, which ~~was~~ was made a vacation
cause by decree entered on the 10th day of December, 1902, came on to
be heard on the bill of the complainant, taken for confessed, with gen-
eral replication thereto, and was argued by counsel.

On consideration whereof the court doth adjudge, order and decree
that that clause of the last will and testament of Lou Edna Whitley, (Ac. 1.)
which reads as follows:—" I give and bequeath to W.C. Britt, son of
Henry M. Britt, and his wife, the plantation in Southampton County, Va.,
called the Mill plantation, adjoining the lands of O.M. Bryant, Jona-
than Britt and other, to him and to his heirs forever", be construed to
give to W.C. Britt, (it appearing that his wife died before the testa-
trix,) a fee simple title to the entire property.

To the Clerk of the Circuit Court of the County of Southampton, Va.

Britt W. L.

vs. }

SUBPENA
IN CHANCERY.

Britt et als.

J. B. Prince vs. p. q.

To 2nd September Rules.

Lancaster Court.

Executed in the City of
 Portsmouth Virginia on
 this 2nd day of September
 1902 by delivering a true
 copy hereof to J. B. Britt et
 al. persons that residing Robert
 J. Britt as his usual place
 of abode I delivered a true
 copy hereof to Mrs. J. B. Britt
 and she being there and
 being a member of his family
 over 16 years of age and explain-
 ed to her its purpose.
 Witness my hand and seal of said
 City of Richmond this 2nd day of September
 1902
 J. B. Prince
 J. B. Prince
 J. B. Prince

The Commonwealth of Virginia,

To the Sergeant of the City of Portsmouth Greeting:

WE COMMAND YOU, That you summon W. A. Brill, Robert E. Brill,

F. J. Brill, Julia M. Brill and Isaac M. Brill.

to appear at the Clerk's Office of the Circuit Court of the County of
Southampton at the rules to be held for the said court on the 3rd Monday in
September 1902, to answer a bill in chancery exhibited against them
in our said court by W. A. Brill

And have then there this writ. Witness L. A. Gay, Clerk
of our said court, at the courthouse, the 29th day of August 1902, and
in the 127th year of the Commonwealth.

Teste: L. A. Gay 4.4.

Britt W. Co.

vs.

SUBPENA
IN CHANCERY.

Britt et als.

J. B. Princeton p. q.

To 2nd. September Rules.

Circuit Court.

Specified Sept. 6. 1902
by delivering a copy
of this notice to Isaac
H. Britt

J. Williams
Clerk

(1)

The Commonwealth of Virginia,

To the Sheriff of the County of Southampton Greeting:

WE COMMAND YOU, That you summon H. A. Brill, Robert E. Brill,

F. J. Brill, Julian M. Brill and Isaac W. Brill

to appear at the Clerk's Office of the Circuit Court of the County of
Southampton at the rules to be held for the said court on the 3rd, Monday in
September 1902, to answer a bill in chancery exhibited against them
in our said court by W. L. Brill

And have then there this writ. Witness L. A. Gay, Clerk
of our said court, at the courthouse, the 29th day of August 1902, and
in the 127th year of the Commonwealth.

Teste: L. A. Gay C. C.



Franklin, Va., Oct 1, 1902
H. J. B. Prince & son, p. q.
To THE GRAPHIC, Dr.

{ A Weekly Newspaper Devoted to the Interest of Southampton and Adjoining Counties. Ten Pages and ALL HOME PRINT. Subscription, \$1.00 a Year in Advance. }

BOOKLETS,
PAMPHLETS AND ALL

JOB PRINTING Neatly and Promptly Executed.

To Court Publication 4
issues, Sept 5, 13, 19 & 26th 1902.
H. C. Britt, Plff. vs. H. A. Britt, Robt
E. Britt, F. J. Britt, Julia M.
Britt and Isaac H. Britt, Dfts. 4 00

I hereby certify that the order of publication,
a copy of which is hereto attached, was published
for four successive weeks, beginning Sept 5, 1902
and ending Sept 26th, 1902, in The Graphic, a
newspaper published in Franklin, Va.

W. A. Magee, Editor

VIRGINIA: IN VACATION, in the
Clerk's office of the Circuit Court
of the County of Southampton,
on the 29th day of August, 1902.

W. C. Britt, ... Plaintiff }
against } In
H. A. Britt, Robert E. Britt, F. } Chan
T. Britt, Julia M. Britt, and } cery.
Isaac W. Britt, ... Defendants. }

The object of this suit is to obtain a
construction of the 1st clause of the last
will and testament of L. Edney Whit-
tey.

And an affidavit having been made and
filed that the defendants H. A. Britt and
Julia M. Britt are not residents of the
State of Virginia, it is ordered that they
do appear here within 15 days after due
publication hereof, and do what may be
necessary to protect their interest in this
suit. And it is further ordered that a
copy hereof be published once a week
for four weeks in The Graphic, and that
a copy be posted at the front door of
the Court-house in this County on the
first day of the next term of the County
Court.

A copy—Teste.

L. A. GAY, Clerk.
J. B. PRINCE & SON, p. q. Sept-5 4t.

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

I, L. N. Gay Clerk of the above said Court, in the County
above said do certify that ^{was posted} a copy of the
within order of Publication at the front door of the
Court House on the 1st day of the Sept. Term of the
County Court thereof
Given under my hand this 6th day of Oct. 1902.

L. N. Gay C. C.

FORM NO. 501 1/2

Brite M. G.

ORDER OF
PUBLICATION.

vs

Brite et al.

1902. 29th Aug. filed

Call has not
yet matured
on the O.P.

Oct. 9 1902

R. R. F.

Virginia.

In the Clerk's Office of the Circuit Court of the County of
Samarthampton^{in vacation} on the 29th day of August 1902 189 :

W. L. Britt

against

Plaintiff

In Chancery.

H. A. Britt, Robert E. Britt, F. J. Britt,

Julia M. Britt and Isaac W. Britt. Defendants

The object of this suit is to obtain a construction of the last
will and testament of L. Edney Whitely of the last clause

And an affidavit having been made and filed that the defendants ~~Robert E. Britt & F. J. Britt~~
~~H. A. Britt and Julia M. Britt~~ are
not residents of the State of Virginia, it is ordered that they do appear here within 15 days
after due publication hereof, and do what may be necessary to protect their interest in this suit. And
it is further ordered that a copy hereof be published once a week for four weeks in the "The Graphic",
and that a copy be posted at the front door of the court-house of this County
on the first day of the next term of the County Court.

A copy—Teste:

J. N. Pinnerman

p. q.

J. A. Hay

Clerk.

Britt W. G.

vs. {

AFFIDAVIT FOR ORDER
OF
PUBLICATION.

Britt et als.

J. B. Prince vs. son p. q.

1902. 29th. Aug. filed

In the Clerk's Office of the Guinea Court of the County of
Somersetshire

W. G. Brice

Plaintiff,

against

N. A. Brice, Robert E. Brice, F. V.
Brice, Julia M. Brice and Isaac W. Brice

Defendants.

In Chancery.

This day J. B. Paine Jr. Aug. personally appeared
before me L. A. Gay Clerk of the said Court,
and being duly sworn, made oath that N. A. Brice and Julia M. Brice

ind. of the

defendants in the said suit are not residents of the State of Virginia,

Given under my hand as Clerk of the said Court, this 29th day of Aug 1902

L. A. Gay 4, 4.

Britt W. L.

vs { Stat: of costs

Britt et als.

W. L. Britte

vs. Stat. of Costs

1902

Britte et als.

Aug. 29th

Sum, 25, 1 exp 13, another sum, 25, 2 exp 26 =	89
receipt for both 36, atty, 10. Docket 18 =	64
reels 1.00, entering return 35 filing bill 15 =	1.50
D. exhibits 15, copy exhibits 1.25 =	1.40
affidavit as to non-residence 15, fil. same 15 =	30
copy or. pub. for printer 20. D. to post 20, -	40
fil. certificate of printer 15, fil. or. pub. 20, -	35
2 decesses 72, Tax Costs &c, 40 -	1.12
filing away papers 25 =	25

1/23/1903

Paid by J. B. Porina Jr. L. A. Gay to Lark \$6.85
pd J. W. Hines shff shff 50
pd shff. of Noyes & Co. 1.00
Lawre. 16.50
\$24.85

Account of The Graphic printing exp. 4.00
\$28.85
Teste: L. A. Gay Lk

28.85

25.00

3.85

Circuit Court of the County of Southampton, in vacation, the ^{10th} day
of ~~November~~ ^{December}, 1902.

W.C. Britt,

Plaintiff.

vs. Decease

~~H.A. Britt, Robert E. Britt, F.T. Britt, Julia M. Britt and~~

Isaac W. Britt.

Defendants.

By consent of parties entered of record, in vacation, it is hereby
decreed that this cause be submitted to the Judge of the Circuit Court
of Southampton county, in vacation, to enter such orders, or orders,
therein, in vacation, as may be entered in term.

Robert E. Britt
To the Clerk of the
Circuit Court of
Southampton County:

6
31
4

2
4
12

F

Circuit Court of Southampton County, in vacation, on the 13th.
day of January 1903.

W. C. Britt

v.

H. A. Britt, Robert E. Britt, F. T. Britt, Julia M. Britt
and Isaac W. Britt

This Cause, which has been by consent of parties submitted to
the Judge of this Court for such decisions and decrees therein
in vacation, as might be made in term, came on this day to be
heard upon the bill the cause having been regularly matured
and set for hearing according to law and the defendants still
failing to appear and plead, answer or demur, and was argued
by counsel.

On consideration whereof, the Court proceeding to construe
the first item of the will of Lou Edney Whitley, is of
the opinion that by the said item the complainant William C.
Britt takes the real estate therein described as the Mill
plantation joining the lands of O. M. Bryant, Jonathan Britt
& others, in fee simple absolute, and that no estate or interest
whatever passed or was intended to be passed or vested in
the wife of the said William C. Britt either as a joint tenant
with the said William C. Britt or otherwise; and that the words
"Henry M. Britt and his wife" in said first item of said
will referred to the wife of Henry M. Britt and not to the
wife of William C. Britt; therefore the Court doth accordingly
so adjudge, order decree and decide.

The object of this suit having been accomplished it is
ordered to be stricken from the docket.

To the Clerk of the Circuit

Court of Southampton County:-

Robert E. Britt