

1872-058 Chancery causes: William B. Clark vs Joseph B. Whitehead, etor of Richard Smelley & al
Isl of Wight County

37

other SURnames: Clarke

1010
William B. Clark

Bill in Chy.

Smelly Co. & all

Dec. 1. 1851. Bill & filed
& withy. done.

1852. Jan. 5th report
of division &c.

Wm B Clark

as the executor thereof, as will appear by ^{a copy of the} certificate of probate granted him by this court, which is here with filed ^{marked B.} and prayed to be taken as a part of this Bill. Your orator has understood and believes & therefore he charges that the said executor has paid all the debts due by the said Richard Smelly or by his estate, that upon the death of the widow the said Ann, the said executor also took possession of the whole of the estate remaining at the time of her death which he now holds, and amongst other things, the followings negroes viz: Jim, Lewis, Mena, and Lucinda. Your orator further charges that there has never been a division of the said slaves amongst those entitled which it is now greatly to his interest there should be, and for this object, he has ^{repeatedly} called on the said Whithead executor as aforesaid and the other parties, who have as constantly refused, alleging the infancy of some of the parties and other causes & reasons which are unavailing save in so far as they consider them of no use. Your orator prays that the said Joseph B Whithead as the executor of the said Richard Smelly dec'd and the said Richard C, William C, and Eliza A Smelly ^{may} be made parties defendants to this Bill, and be compelled to answer the same as fully as if they were specially thereto interrogated the first two (Whithead & Richard C Smelly) upon their several corporal oaths and the said Wm C & Eliza A by a proper guardian ad litem to be appointed them by this Hon^{ble} court. That your worships will grant a decree appointing commissioners to assign your orator in right of his wife the said Sarah J his share ^(one fourth) of the said negroes viz: Jim, Lewis, Mena, & Lucinda, upon on the principles set forth in this Bill and that your worships will grant the South. writ. &c.

A. A. Whithead J. J.

The Answer of Joseph B Whithead executor of Richard Smelly dec'd to a Bill filed in the Court for Isle of Wight County by Wm B Clark against him & others

This respondent saving &c. for answer to &c: Answers & says. That it is true as in said Bill alleged that he is the executor of Richard Smelly dec'd, that he believes the debts of the estate are paid at least all that he has any knowledge of, and that the allegations in said Bill contained he believes are true and has no objection to the court granting the decree therein prayed for, provided the plaintiff is required to enter into & execute the refunding bond which the law in such cases requires to be given: and having answered prays hence &c.

J. B. Whithead

Isle of Wight County to wit:

This day Joseph B Whithead executor of Richard Smelly dec'd personally appeared before me and made oath that the facts in his answer above contained are true to the best of his knowledge and belief given under my hand and seal this 1st Decr. 1851

W. L. Latimer J. J.

To the worshipful the justices of the court for Isle of Wight County, in chancery sitting.

Humbly complaining sheweth unto your worships, your orator William B. Clark that in right of his Wife Sarah Jane Clark formerly Smelly he is entitled to ^{an} portion (one fourth) of the estate of her late father one Richard Smelly dec'd late of said County who departed this life some time in the year 1844 (April) ~~testator~~ having first duly made and published his last will and testament, ^{which was admitted to probate by this court at its June term 1844} and leaving as his legatus and heirs at law his widow ^{Anna} and the following children to wit: Richard C., William C., & Olega A. Smelly and the wife of your orator the said Sarah J. (The said Richard C., Wm C., and Olega A. being infants under twenty one & under 14 years except the said Richard C. who is above the age of 14 years,) a copy of which said will is here ^{marked &c.} with filed and prayed to be taken as a part of this Bill; and seized and possessed of considerable real and personal estate, that by ~~said~~ the 1st item of said will the testator ~~leaves~~ to his wife Ann Smelly the use of all his estate both real and personal during her natural life or widowhood; on condition that she support and educate his children in a decent manner. By the 2nd item should his wife marry he gives her an equal portion in his estate with his children share & share alike &c. That since which time the said Ann Smelly widow of said Richard Smelly has departed this life to wit: April 1848 without ever having married since the said Richard's death, that consequently the whole of said property now belongs to the estate of said Richard Smelly dec'd and ought in fact to be divided among his four children in equal shares, That since the death of the said Ann ^{the} widow (and also the mother of your orator's wife) the said Sarah J. wife of your orator has also departed this life to wit on the month of 1850. Your Orator further shews that J. B. Whitstead the executor named in said will has duly qualified

Richard C Smiley

Answer

I have been thinking of you lately & wondering how you are getting on. I hope you are well & happy. I have been very busy lately but I will try to write you a few lines. I have been thinking of you a great deal lately & wondering how you are getting on. I hope you are well & happy. I have been very busy lately but I will try to write you a few lines. I have been thinking of you a great deal lately & wondering how you are getting on. I hope you are well & happy. I have been very busy lately but I will try to write you a few lines.

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The Answer of Richard C Smalley one of the Infants of Richard Smalley
decd, to a Bill filed, by William B Clarke against himself and others, in
the Court for Sale of Wight County. This respondent saving and reserving &c:
for answer to so much of said Bill as he is advised it is material for
him to answer, answers & says, That he is an infant under 21 year of
age, but above 14 years, and as far as he is capable of judging, of
the right of said William B Clarke to have his share of said slaves
allotted to him is undoubted, and therefore he cannot object, that the
allegations of said Bill are ~~severally~~ true to the best of his belief, and
that he has no objection to any decree which this honorable court may
think proper to make in the premises; & having answered prayer here
to be dismissed &c.

Richard C. Smalley 

Sale of Wight County to wit:

This day Richard C Smalley one of the infants of Richard Smalley
decd & personally appeared before me a justice of the peace for the County aforesaid
and made oath that the facts in his answer above contained are true, so far
as he knows or believes: Given under my hand & seal this 1st day Decr. 1851

M. Noble J.P.



Infants

Fusion.

The joint and several Answer of Richard C, William C, and Elyza Ann Smellie's infants under twenty one years of age by N. P. Young their Guardian ad litem to a bill filed in the court for Isle of Wight county by William B Clark vs them & others. These Respondents by Nathaniel P Young their guardian ad litem saving to themselves &c for answer &c says that they are infants under twenty one years of age, & for the protection of their rights beg leave to place them selves under the protection and control of this honorable court & having answered they pray hence to be dismissed with &c

N. P. Young gov. ad
litem.

Wm. B. Clarke

vs. J. Co. Secree

Smully's Secor. Tals.

In Sess. Wight County Court December 1st. 1857
Wm. B. Clarke

Against } In Chancery
Joseph B. Whitehead Exor: of Rich^d. Smelly dec^d. &c.
On the motion of the plaintiff one Nathaniel P. Young
was appointed guardian ad litem to defend the
infant defendants in this suit, and this cause was
this day docketed & came on to be heard by consent of
parties, upon the bill, answer &c. filed, and was
argued by counsel, On consideration whereof the
Court doth adjudge, order & decree that John A.
Jordan, William H. Jordan, John Morrison and
Edwin Morrison, who are hereby appointed commis-
sions for that purpose (any three of whom may act)
do proceed to divide or set apart, (after having given
ten day notice to the parties of the time and
place of division) the portion of said slaves to wit:
Jim, Lewis, Minna & Lucilla, named in the said
bill, to Wm. B. Clarke, it being one fourth part, and
the other three fourths to Joseph B. Whitehead exor:
of Richard C. Smelly, Wm. C. and Eliza A. Smelly.
But the said Wm. B. Clarke is to give a refunding
bond to the said Joseph B. Whitehead exor: of Richard
Smelly dec^d. as the law in such cases requires,
and that they make report to this Court of their
transactions in order to a final decree in the
premises

A Copy
Teste

C. H. Boykin D.C.

The Undersigned commissioners named in the answer-
ed decree submit the following report; On the 30th day
of December 1857 after having given notice of the
time and place they did in the Town of Smithsfield
attend and set apart to William B. Clarke, negro
man Jim valued at \$350 and to receive from
J^r. B. Whitehead guardian to Richard C. Smelly
William C. Smelly & Eliza A. Smelly one hun-
dred & thirty seven dollars fifty cents
They further report the following valuation of the
Slaves named in the decree \$ Minna 550 Lewis
\$800 Lucilla \$250 Jim \$350 amounting to \$1950
W. B. Clarke's proportion \$487.50 being one fourth
of the whole, all of which is respectfully submitted
Signed

Edwin Morrison
W. H. Jordan
John A. Jordan
3

Deere

William B Clarke

against

Joseph B Whithead exor of R Smelly decd. & others

3 In Chancery

off.

Def'ts.

On motion of the complainant one Nathaniel P Young was appointed guardian and tutor to defend the infants in this suit, & thereupon this cause was this day docketed, and came on to be heard, by consent of parties upon the Bill Answer &c. filed, and was argued by counsel, on consideration whereof the court doth adjudged order and decree that John A Lordan, William A Lordan John Morrison and Edwin Morrison who are hereby appointed commissioners for that purpose (any three of whom may act) do proceed to divide ^{or set apart} after giving 10 days notice to the parties of the time and place of division, the portion of said slaves (to wit: Jim Lewis Mina and Lucella) named in said Bill, to Mrs B Clarke ^{part} one fourth, and the other three fourths to Jos. B Whithead as the Guardian of Richard C, William C, & Eliza A Smelly, But the said Mrs B Clarke is to give a refunding bond to the said J. B. Whithead, exor. of Richard Smelly decd. as the law in such cases requires, And that they make report to this court of their transactions in order to a final decree in the premises

and declared as & for the last will and testament of Richard
Smully in presence of us
Richard Reynolds
George Mingard

In Isle of Wight County Court June term 1844
the foregoing Will of Richard Smully was presented in court
by Jos. B. Whitehead the executor therein named, and proved
by the oaths of Rich^d. Reynolds and George Mingard the
witnesses thereto and ordered to be recorded

Teste

N. O. Young clk

Copy

Teste

J. P. Mills Jc

Richard Smully's

Will

(ad copy)

(Ex. A.)

I Richard Smully of the County of Ale of Wight and State of Virginia do make and ordain this to be my last will and testament in manner and form following hereby revoking all other Wills & testaments by me made

Item 1st I leave the use of all my estate both real & personal to my wife Ann Smully during her natural life or widowhood on condition that she supports and educates my children in a decent manner —

Item 2nd Should my wife marry I leave her an equal proportion of my property with my children share & share alike, in case the proportion of my property she may receive shall not exceed one fourth of my estate both real and personal, and in case my children should all die without marrying or leaving child or children I give the whole of my estate both real & personal to my wife — Item 3rd I hereby constitute and appoint my friend Jos. B. Whitehead executor to this my last will and testament, and guardian to all my children, investing him with the right & power to advise and direct my wife in the management of my property devised to her in the first clause of this my last will and hereby empowering him by and with the consent of my wife to dispose of any of my property they may think advantageous to my estate and vest the proceeds in other property to be used for the benefit of my estate and considered a part thereof.

Item 4th Should any of my children marry during my wife's widowhood she may if she chooses by and with the consent of my executor make advances to the said child but said advance is in no case to exceed one tenth of my estate but it is to be distinctly understood she may or may not advance as to her & my executor seems best. Item 5th I hereby authorize my executor & guardian to my children by will or otherwise to appoint guardians to my children to act from and after his death. —

In testimony that this is my last will & testament I have hereunto set my hand and affixed my seal this 21st day of February 1843
Signed, sealed and delivered, published } Richard Smully (seal)

Mr A. A. Whitehead

Dear Abner

I spoke to you same day ago to draw
a decree to set off William W Clark's proportion of
the Slaves Richard Smully died in possession of,
but I fear you have forgotten to prepare the papers.
The Childrens' names are Richard C. Smully William
C Smully, Eliza. Smully & Clark's wife was named
Sarah L. The negroes are named Jim Lewis
Mena & Lucinda. I want the decree obtained
at this court. yours truly

Nov^r 29. 1857

W. Whitehead