

1882-008

Chancery Causes: Martha A. Barnes vs Joseph H. Duck + Edwin (Drown) W. Duck

Isle of Wright County

Martha A. Barnes.

N. 3 Bills and
3 Exhibit. -

Joseph I. W. Duchs ..

1880.

Sept. Rules - Bill 1st filed
and De. missi.

" Octo. Rls. Bill taken for
confd. Act for hearing

" Octo. Ch. 1880. Leave
for Dept. to bill
Answer ver. &c.

" Apr. 1881. Ac. App'ty.
Commrs. to assign
13 of Nancy Dick
down to Martha
A. Barnes &c.

allotted to her; and in case the said real estate be indivisible in kind that the same may be exposed to sale, and the proceeds thereof distributed among the parties entitled thereto. That an account may be taken by one of the Master Commissioners of this Court showing the rents and profits arising from the said real estate since the death of Nancy Duck, and the amount of your Complainant's share thereof; that Joseph H. Duck be required to pay to your Complainant her proper share of the said rents and profits of the said real estate and that such other, further and general relief may be granted her, as the nature of her case may require, or to equity shall seem meet.

And your Complainant will ever pray &c.
 Let a Subpoena go &c.

Martha A. Barnes
 by Counsel.

C. C. Causey,
 Withas Agents.

21. August 1880.

Said "Home" place and saved the plain and undoubted right of your Complainant to share in coparcenary with himself and their brother Irwin W. Duck the rents and profits of that portion of the said "Home" place above described assigned to the said Nancy Duck as and for her dower; and which upon the death of the said Nancy Duck became the estate in fee simple of your Complainant and the said Joseph H. & Irwin W. Duck as coparceners, heirs at law of the said Jacob H. Duck decd. -

That your Complainant does not believe that that the said real estate is susceptible of partition among the parties entitled, if it is she desires that such partition may be made, but if it is not, then your Complainant desires the same to be sold and the proceeds distributed among the parties entitled in proportion to their respective interests therein. -

In tender consideration whereof and forasmuch as your Complainant is remediless save in a Court of Equity, where such matters are properly cognizable and relievable she prays that Joseph H. Duck and Irwin W. Duck may be made parties defendants to this bill and required to answer the same, that the said real estate may be divided between the parties aforementioned, entitled thereto, and your Complainant's portion thereof allotted

"and thence along the fence to the garden,
 "and thence along the yard railing to the
 "land fence and thence along the land fence
 "on the North side to the road, and straight
 "to the branch, and thence down the branch
 "to Beaverdam Swamp, and thence down
 "said Swamp to a large branch and up
 "the branch to the beginning. - With the
 "privilege of the entire use of the barns &
 "stables" All of which together with the
~~order~~ of the County Court of Isle of Wight County
 confirming the said report, will appear by ref-
 erence to the copy herewith filed marked
 Exhibit No. 1, and asked to be read as a
 part of this bill. -

That by virtue of the said assignment
 the said Nancy Duck became seised and
 possessed of a life estate in the Realty above
 described, and took the same as and for her
 dower in the real estate of Jacob H. Duck decd.,
 and lived thereon up to the time of her death,
 which occurred some time in the year 1875. -

That the residue of the said "Home" place, in
 the division afterwards made among the heirs
 at law of Jacob H. Duck decd. fell to the
 share of Joseph H. Duck, who lived thereon with
 the said Nancy Duck up to the time of her
 death, in 1875, and since her death has claimed
 to be the fee simple owner of the whole of the
 said

1

Martha A. Barnes

Joseph H. Duck and Irwin W. Duck,

To the Hon. George Blow Judge of the
Circuit Court of Isle of Wight County:

Your Complainant Martha A. Barnes
respectfully represents to the Court that your
Complainant's father Jacob H. Duck was in his life-time
seised and possessed of considerable real estate lying
in the County of Isle of Wight, and being so seised
and possessed departed this life intestate some
time in the year 186 leaving a widow, your
Complainant's mother Mrs. Nancy Duck, and
two sons Joseph H. Duck, Irwin W. Duck and
your Complainant as his heirs at law.

That by an order bearing date the 5. September
1864 the County Court of Isle of Wight County
appointed Commissioners to view the lands of
the said Jacob H. Duck decd., and assign dower
therein to his widow the said Nancy Duck according
to law, - which duty the said Commissioners
discharged by setting apart and assigning to the
said Nancy Duck a portion of the "Home" place
described in their report to the Court as follows,
"one equal third part of said lands, having
"regard to quality and quantity, bounded as
"follows: Commencing at a large branch and
"running up a cross fence to the young orchards,
and

Martha A. Warner

2^d
Jos. H. Duck and J. W. Duck.

Answer of
Jos. H. Duck & J. W. Duck.

Disclaimer of
Irwin W. Duck

and
Plea of
Joseph H. Duck

1st Jan'y. 24th - 1881.
Filed.

Jan'y 24th 1881

1 Virginia
2 County of Isle of Wight to wit;
3 I W. S. Holland a Notary Public
4 in and
5 for the county aforesaid do
6 certify that Joseph H. Duck and Irwin
7 W. Duck whose names are signed to
8 the foregoing Answer Disclaimer
9 and Plea personally appeared before
10 me in my said county and respec-
11 tively made oath to the truth of the
12 statements contained therein to the
13 best of their knowledge and belief
14 given under my hand and seal this
15 19th day of January, 1881
16 W. S. Holland Notary Public

Estate of which the said Jacob H.
Duck died seized and possessed
Sixthly; The said Defendant
Irvin W. Duck says that he does
not claim any interest in the
"Home Place" in the said Com-
plainant's Bill mentioned and
the said Defendant doth disclaim
all right title and interest to
the said "Home Place" and prem-
ises and every part thereof
Seventhly; Your said Defendant
Joseph H. Duck is advised and
insists that the said Complain-
ant Martha A. Barnes is estop-
ped by her said Agreement "X"
and the aforesaid decree from
setting up any claim to the said
"Home Place" or any part thereof
and he claims the same benefit
as if he had formally pleaded
the same as an estoppel in bar
of the Complainant's Bill.

And having answered your said
Defendants pray hence to be dis-
missed with their costs in this
behalf most unreasonably ex-
pended and they will ever pray
and c

Joseph H. Duck
J. H. Duck

© deny the allegation in said Complainant Bill contained
That "the residue of the said ~~Home~~ Place in the division
afterwards made among the heirs at law of said father
H. Duck, succeeded fell to the share of Joseph H. Duck."

on the death of said widow.

1 That as the Complainant well knows
2 it was the intention and under-
3 standing of the parties when they
4 made said Agreement that your
5 said Defendant Joseph H. Duck
6 should be entitled in fee simple
7 to the said "Home Place" subject
8 only to the life interest of said
9 widow in that portion thereof as-
10 signed her as dower, and such
11 your said Defendants Joseph H.
12 Duck and Irvin W. Duck aver
13 is the plain import of the Agree-
14 ment; wherefore your said defendants^o

15 Fourthly: That your said Defen-
16 dants Joseph H. Duck and Irvin
17 W. Duck therefore deny and they
18 do hereby deny that the said Com-
19 plainant Martha A. Barnes (as in
20 her said Bill alleged) has any
21 title whatever in or to the said
22 "Home Place"

23 Fifthly: That your said Defen-
24 dants Joseph H. Duck and Irvin W.
25 Duck allege that the said Agree-
26 ment as the Complainant well
27 knows was in the nature of a
28 Family Settlement of a dispute
29 and was intended to be a full
30 and final settlement of the rights
31 of the parties in all the Real

Duck died seized and possessed
among his said heirs at law by an
Agreement in writing under the
hands of said parties, bearing
date on the 18th day of October 1869,
marked "X", filed on said date in
said suit and by a provision of said
Agreement, it was to be entered as
a decree in said suit and the
same was accordingly so done by
the final decree made in said suit
on the 19th day of October 1869, confirm-
ing and enforcing said Agreement
and directing it to be recorded in
the order book of said court.
A certified copy of said Agreement
"X" and of said Decree marked re-
spectively "A" and "B" are herewith
filed and prayed to be taken as
a part of this Answer.
That under said Agreement The
said parties were severally seized
in fee simple of the tracts of land
respectively assigned them.
That the "Horne Place" under said
Agreement was assigned to your
said Defendant Joseph H. Duck
who thereby was seized in fee
simple of said "Horne Place" sub-
ject to the dower previously allot-
ted therein to said widow inclu-
sive of the remainder therein

1 of said intestate, whose dower
2 was assigned her in the "Home
3 Place", and that the said widow
4 has departed this life and was
5 up to the time of her death seized
6 and possessed of her Estate of
7 Dower in said "Home Place".

8 Secondly; These Defendants deny
9 the allegation in said Bill con-
10 tained that on the death of the
11 said Dowress that the portion of
12 said "Home Place" assigned her as
13 dower as bounded in said Bill
14 of Complaint descended on said
15 Complainant Martha A. Barnes
16 and these Defendants Joseph &
17 Duck and Irvin W. Duck equally
18 as coparceners.

19 Thirdly; These Defendants allege
20 that after said assignment of
21 dower to wit at April Rules 1866
22 the aforesaid Joseph & Duck filed
23 his Bill in Chancery against the
24 said Martha A. Barnes and Irvin
25 W. Duck to have partition of the
26 Real Estate of which said Jacob
27 A. Duck died seized and posses-
28 sed among his three said heirs
29 at law; that while the said suit
30 was still pending, the said par-
31 ties thereto made partition of all
the lands of which said Jacob &

To the Honorable George Blow Judge
of the Circuit Court of Isle of Wight
County in Chancery Sitting

The joint and several
Answer of Joseph H. Duck and
Irvin W. Duck and the Disclaimer,
of the said Irvin W. Duck to the
Bill of Complaint in said court
exhibited by Martha F. Barner
against them;

These Defendants saving and
reserving all right of exceptions
to the many errors and imperfec-
tions in said Bill contained for
answer thereto, or to so much
thereof as they are advised it is
material for them to answer,
answering say:

First That they admit to be true
as in said Bill alleged that
Jacob H. Duck the father of said
complainant and said defendants
died intestate in said county
seized and possessed of consid-
erable Real Estate in fee simple
lying in said county and that
on his death the said Real Estate
descended in coparcenary upon
the said complainant and De-
fendants, the sole heirs at law of
said intestate, subject to the
right of dower therein of the widow

Martha A. Barnes

Ms.

2

Series. to

ans. Bill

Jos. W. Duck and

J. W. Duck.

To Sept. Series 1880.

Carney and
Hutton & Dentis, Jr.

Executed by delivering
to the common name
Joseph W. Duck &
J. W. Duck each a
true copy of the common
Series Sept 1st 1880

L. B. Edwards
S. H.

The Commonwealth of Virginia,

TO THE SHERIFF OF ISLE OF WIGHT COUNTY, GREETING:

WE COMMAND YOU TO SUMMON

*Joseph H. Duck and
Irrin H. Duck*

to appear at the Clerk's Office of the Circuit Court of Isle of Wight County, at Rules to be holden for the

said Court, on the first Monday in *September* next to answer *the Bill in
chancery of Martha A. Barnes*

of a plea of ~~for \$~~ Damages \$ ~~And have then there this writ.~~

Witness, N. P. YOUNG, Clerk of our said Court, at ~~the~~ Court House, the *19th*

day of *August* 187*8*, in the *10^{5th}* year of the Commonwealth.

N. P. Young *clerk*

1 The undersigned has never heard of
2 5 '03 H. Blackman's mother's death;
3 that I never even hear her say any
4 thing in the company, either before
5 or after her death, any time, but
6 until she died. She set apart some
7 12 men since as mentioned of
8 0 or 1.

Answer — I never did.

9 Ques. 4 — Did she know of her
10 Mother's death?

Answer — Yes; she was at her funeral.

12 Ques. 5 — The value of said dower in
13 paper is

14 to you under

15 The value of said "dower" ^{ought to be} is put
16 down in paper at \$2333.00 — now do
17 you understand the difference between
18 the value of dower and the present
19 value of the land set apart as
20 dower, and if so state it!

21 Answer — I think I understand it.
22 The difference is at least two thirds
23 of the value of \$2300.

24
25
26 Just in question ~~to~~ ^{for} cross exam
27 nation you refer

28 Cross Examined by Pltffs Counsel

29 Ques. 30 — When did you last see your sister Mrs. Barnes
30 the Plaintiff in this suit?
31

→ Answer — About two years ago.

say whether said deduction of the
amount of \$2333.00 did not have
reference to no down in the whole real
estate of same father.

Answer — I suppose it had reference to the
entire estate

Ques 3 — Did the down include the
lotter include all the buildings on
the Home Place, a heap of them,
I wish a heap as far as would
have the buildings assigned her &
any quantity of land assigned
her —

Ans. Yes, it included nearly all of
the buildings, ^{all} except the ^{one} Barn and
Stables. Including Kitchen Smoke House,
Cider houses, Kettle houses & Co, Two
Barns and some out houses. I will
say 150 or 200 acres of land but I don't
know how much

Ques 3 — In deducting the value of
the down from the Home Place as
shown in agreement of a child with
deduction to be the actual value of
the down as the down as done the
Home Place & the assignment of
same. There is

Answer — I can't answer that question
knowingly

Ques 4 — I am referred to Ques
10 in & I am inclined you say you
never heard Mr. Barnes say that

3dues How many years ago was it that you last
saw your sister?—

Answer — I saw her about Augt 1875 of
the Bill in this suit is correct.

And further the deponent saith not

Joseph H. Black

State of Virginia

Sh of Wight Co. to wit:

I Geo M Waddill a notary
Public for the county aforesaid and said
state, do hereby certify that the foregoing
depositions were duly taken ~~before~~ to
and subscribed before me at the time
and place mentioned therein

Given under my hand this 10th day
of Feby 1881 Geo M Waddill N.P.

Notary for \$4.75[—]

Geo. W. Black et al.
vs.
Depositions
Martha & J. Barnes

Cause to hand under
seal, February 10th
1881, and filed.
Feby, 1881, Yorktown.

in that answer in fee for your
mother's death -

Excepted to for same reasons & became claimant for
Annuity - yes

Ques 7 - Did you die at the time that
you signed said agreement or say
she understood said agreement but
you were to have said home place
on your mother's death or did she say
that on your mother's death the
down land was to be equally divided
between you, your brother & herself
or how did she say the land was
to go on your mother's death -

Exception repeated -

Answer - She said at the time that the
home place at the death of my
mother was mine, and when she
signed this (proper X) the matter
was finally settled

Ques 8 - When did the Pledge put up
any claim to the down land -

Answer - It was some time last year
Ques 9 - When did your mother
die

Answer - In 1875 or 76

Cross-Examined by Pledge Counsel:

Ques 10 - When and where was the paper alluded to as
Agreement X, signed?

Answer - I don't really recollect where and
on the time -

Ques 11 - When did you last see your sister Mrs. Barnes
the plaintiff in this suit?

Answer - Ten or twelve days after my mother's
death

Quest 3rd - In answer to Quest 1st you say
my sister wished I made her the home
place, the best terms & conditions that
she could get to have the
same.

Excepted to for the same reasons that Question 1.
is excepted to -

Answer - Well, they wished me to
take my interest in the home ^{place}, at home
because I would have a home at my
mother's death and would take care
of her during her life.

Quest 4th - Question 3 Rejected
Exception repeated. -

Answer - Well, they said the lands
that had been allotted to me on
equal shares, with the balance and
I was to pay them some money, and
was to have it at my mother's death.

Quest - 5th Question 3 Rejected on same
terms & conditions that your sister made
you to have the Home Place.

Exception repeated. -

The conditions were that I was to
have the home place to take care of
my father and mother. They said
my share was not worth any more
than theirs taking my services in
consideration.

Quest 6th - In your foregoing answer to question
1st you have stated that I was your heir
standing when you signed a power of attorney
that at your mother's death you were to
have the whole of the "Home Place," by saying
you sister wished you to have the Home
Place are you to be understood as meaning
that you should have it as you have stated.

2nd Ques. When had you seen her before?
 Answer I reckon about three ^{years} perhaps
 about five years ~~before~~ ago.

Further this dependent saith not

J. H. Duck

1st Ques. J. H. Duck being duly sworn in
 answer to questions at first and says
 Question by J. H. Duck -

Look upon & state what is in your mind
 as I say what was your contribution
 of said agreement when signed?
 I am in reference to the above appoin-
 ed, your mother on her death -
 Capt. to be Plaintiff Counsel because the question
 seeks to elicit testimony to alter, vary and
 explain the plain import and meaning of
 a contract in writing which needs no
 explanation -

Answer - It was my understanding
 that the land was all mine at my
 mother's death; the Commissioners
 told me so, and all the parties
 understood it; I say by all the
 land I mean all the home place.

The above was mine at my mother's
 death as I always understood it.
 My brother and sister said I could
 have the home place. My mother also
 wished me to have it.

Ques 2^o - In your last answer you say
 my brother & sister said I could have the
 home place - who is the sister alluded
 to?

Answer - Mrs Martha A Barnes the
 plaintiff in this suit

on which the first division was made by the Commissioners and the division was assigned on which this paper X was based, and from the Commissioners

22 Ques When did your Mother die?

Answer — I think it was in 1875 or 1876

Re examination by Defendant's Counsel

10 Ques 1st.

The paper "X" Geo. H. Dick's share of "Home Place" is valued at \$2167 - now did said \$2167 include both the value of the "little piece" of land allotted to him in possession and also the value of the quarter of the lower at his mother's death -

Except to because it seeks to introduce testimony to vary and contradict the plain import and meaning of Agreement X which is the best evidence and the only proper evidence of the intent of the parties who signed it.

Answer — I thought so at the time that included both and I am so strongly impressed that I will not have a dollar

Ques 2^d - In your answer to question 9 in cross examination you say the fee simple value of your Mother's share was deducted before the division was made.

of the dower tract together, or it may
refer to the reverter of the dower alone.
~~Answer to question 18~~ — and because
the question assumes that the piece allotted
him in possession in paper "X" is valued
at \$2167. Whereas it appears from the
witness's answer that \$2167 was
the sum of the values of the piece
in possession and the value of
the reverter of dower at John H. Duck's
mother's death.

Answer to question 19 —

In answer to the question I wish to
say I did not understand question
18, and answered it at what I think
the property is worth to day. In answer
to the 18th question I say it was worth
\$2167 according to that paper.

10th Ques. Does it not appear to you that ~~as~~ John H.
Duck has already received ~~received~~ his
full share of your father's ^{real} estate
independently of the dower?

Answer — Not as I understood it on
that day.

21 Ques. What day and from whom?

Excepted to so much of said question as refers
"to from whom". because there is
no reference to any person in preceding
question — and no persons as the
question indicates are referred to in
the examination in chief.

Answer — The day was the day

16 Ques: And what was the value of that part
 1 of the Home place assigned to Jos.
 2 Duck? —

Answer — \$2147⁰⁰ —

17 Ques: And ^{were not} the sums which he paid you and
 4 your sister ~~was~~ simply the difference
 5 between the share he was entitled to
 6 receive ^{as a share} and the said sum of \$2167.⁰⁰?
 7

8 Excepted to because he was a "share"
 9 in 1847 may refer to part of the
 10 said place or it may, and prob-
 11 ably does refer to that part of said
 12 Home place not included in said
 13 dower or together with and including
 14 the contingent value of said dower
 15 at the death of Jos. Duck's mother —

16 Answer — That is so, the sums were
 17 made equal to the amount \$1555⁶⁷ but
 18 this property was not yet in his
 19 possession, some little was in
 20 his possession, and I still understood
 21 that he was to have the dower at
 22 my mother's death

18 Ques: What was the value of "the little" in his
 23 possession? —
 24

Answer — I suppose it was worth half
 25 of the \$1555⁶⁷

19 Ques: Can you tell then why it was that in
 26 Agreement & it is valued at \$2167.⁰⁰
 27

Answer — The Commissioners will

28 Excepted to, because if ambiguous, the word "it"
 29 may refer to the small piece of land allotted to him
 30 in possession or it may refer to that and the reversion

J. B. LIPPINCOTT & CO.
Booksellers and Stationers
Philadelphia, Pa.

Value of your mother's house and lot?

1

1000 - the division was made?

Answer to Question 9 That I cannot know

3

because I always understood that the

4

house reverted back to Jos. H. Buck

5

at his mother's death.

11 Ques

6

Was anything said by you or Jos. H. Buck

7

Reveries Law to?

Answer - I never did

11 Ques

9

At the division made in 1850 did you

10

to the amount & did not Jos. H. Buck

11

know his full share of the real estate

12

of your father, after conducting the

13

for simple value of your mother's house?

Answer - I think not, and he always so

contradicted

12 Ques

16

What was the value of said one share

17

at the division made in 1850 divided by

18

between you &?

Answer - \$1535.57

13 Ques

20

What was the value of the one share

21

to Jos. H. Buck at the time?

Answer - The same amount

14 Ques

23

Was not his share of the Home place

24

valued at more than \$1535.57 and did

25

he not have to pay you and your sister

26

a sum of money in order to equalize

27

the division?

Answer - He did

15 Ques

29

What was the for simple value of the

30

Home Place as fixed at the time of the

31

division?

Answer - \$1500 ⁰⁰/₁₀₀

8
Donor had been assigned to him, and
was it not made by the parties
themselves and was not Agreement
X then for the first time drawn
and signed? —

~~Answer~~ —

Excepted to — 1st because ambiguous, in that it does
not show whether it refers to division
as made in paper "X" or some other
division, 2^d because if it refers to any
other division than that of paper
"X" it has not been referred to in
examination in chief —

Answer — The first division was ~~not~~
made at the same day, and the last
was some time after, the parties
through their atty made the agreement
X — this paper X was then for
the first time drawn and I see
by the date that it was in 1869.

Excepted to so much of this answer as refers
to any other division than that made
in paper "X" because not referred
to in the examination in chief as
alluded to in the pleading.

9 Cross

As the division made by the parties through
their Attorneys in 1869, entered by
Agreement X, was not the fee simple

4 Ques. The son saw the Agreement X was signed on the premises? ~~That was~~

Answer — This is not exactly the same agreement or the same paper but of the same purport,

5 Ques. (Or now as to any agreement was ever signed on the premises, after the division was made by 4 Commissioners?

Excepted to — because no other agreement except agreement "X" has been referred to in the examination in chief.

Answer — I want to say that it was signed on that day (paper X) but if not, it was signed some other

6 Ques. When was the division made by 4 Commissioners? —

Excepted to — because irrelevant to any issue in the pleadings and because not referred to in the examination in chief —

Answer — That is what I can't tell, but I reckon it was in 1863,

7 Ques. When was Agreement X signed?

Answer — I can't say what day positively

8 Ques. Was not the division of your father's real estate made long after your mother's

En
You & Anne to Court 8 -

I understood it then, as I do now

Cross Examined by Phipps Counsel

Ques. If you are a witness in the
Docket, was not a man present for
Hutch at your Mother's death in
the simple without the payment of
nothing to the other heirs of your
father?

Answer Because ^{the} Commissioner
in the division of the land
told me so

Question 2nd What Commissioners?

Answer - W^m E. Barnes,
Edward Rawls, Wm H. Vaughan
& J. R. Butler.

Excepted to the answers to 1st & 2nd questions
as alluding to matters irrelevant or
not in controversy or previously alluded
to

3. Question: When? - (Question excepted to for
the same reasons given in exception
to Ans 1 & 2 in cross examination)

Answer to 3rd Question - On the day, or the
morning, the same day the agreement
was signed

parties expressed any opinion
in reference to said agreement -
different from that given by
you, ^{as above} before the claim was
mentioned of Mrs. Barnes as
about said date -

Ans - I think I was present
and if any thing was expressed
agreement I did not hear it, not
until twelve months ago

Quest 7 " I saw - State
whether or not & the language
of said agreement as understood
at present time, is in accord-
ance with the construction given
by you as above -

Excepted to Dr. Plummer's Counsel (Exception of
Plum. excepted to 1. Plummer's Counsel
became the ground for exception is
said version of said agreement)

Ans - I did so understand
it.

Quest 8 " I saw - What do you
mean by your answer to quest 7
I did so understand it?
Ans

Excepted to because it ~~seems~~ seeks to introduce testimony
to explain or vary agreement X - -

understand to be its meaning
as to to whom the donor should
go on the death of Mrs. Nancy
Brack.

Exhibit 1 - because it seeks to set out
the plain import of Agreement X which
is not ambiguous and needs no expla-
nation.

Ans. - I understood it was to go
to Mrs. H. Brack.

Question 5 - What was your constan-
tation of said agreement at that
date, as to any additional payment
to be made by said J. P. N. Brack

Exhibit 10 - because it asks a legal opinion of
the court and because it seeks to
vary or explain the meaning of Agreement
X.

Ans. - I did not expect any.

Question 6 - I am - I state the date of
your mother's death -

Ans. - I think it 1867 was in 1867
or 1868 I should have said 1875 or 78

Question 7 - State whether you were
present when said agreement
was signed whether a sub-
scribing or at any other time before said

had no objection, because it was in
the opinion of the witnesses and for
the reason that the Agreement & a
paper to it was "lost evidence" and
the question was to elicit testimony
to show and other things, then in dispute
and remaining.)

Ques - to your ^{4th} question,
my understanding was that
the donor went to my brother,
at my mother's death. I have told
him that I would not claim any
interest in the donor. Twelve months
ago, or thereabouts, was the first
that I heard of Mrs Burns (the
plaintiff) sitting up any claim
to the donor.

Ques - 3rd - Do you under the term
of said ^{agreement} ~~contract~~ claim any title to
said donor -

Ans. - None in the world, nothing
more than the cost, I don't intend
to pay any of the cost - So much
of said agreement as is not excepted
to by the Court as not being
done to my question -

Ques - 4th - When you signed
said agreement, did you
~~continue it to~~ ~~did~~ you

if the defendant J H Buck
Just 2nd by same - Look upon
the Agreement & filed with
John A. Moore & Brinkman &
alluded to in the decree in the
suit of Barnes & also Buck, & ad-
vised to be recorded in said suit in
the order book of the circuit court
of this county & confirmed of said
decree is the agreement of the parties
to said suit for the division of
the lands of Jacob H Buck among
said parties & say whether it does
the understanding of your self &
the other parties signing said
a agreement, that all the Home
place assigned J H Buck was
to be divided & him on the agreement
of the court mentioned in said
decree & a agreement; or whether
the part assigned as home was
excepted in said agreement -
Whether you claim any part
of said Home Place when you
first heard the Plff set up any claim
to a part of the home land, or in
that a part of said Home Place &
Exc'd to in Private Attorney's Office

Exc'd to in

The Deposition of John W. Duck taken before me George M. Wadell a Justice Public for the County of Isle of Wight (which being sworn by Plaintiff Counsel) at the office of W. S. Holland at Windsor Isle of Wight County Va. on the 10. day of February 1881 to be read as evidence in behalf of the Defendants in a certain suit in Equity pending in the Circuit Court of Isle of Wight County against Martha A. Barnes vs. Plaintiff and Joseph H. Duck and the said John W. Duck are Defendants.

Present: Charles J. Harden and W. S. Holland Attys for Defendants

Robt. R. Pringle of Counsel for Plaintiff.

The witness John W. Duck being first duly sworn in answer to questions proposed and says: -

1st Section by defendants atty. -

State your age, residence, and relation to the parties to this suit.

Answer My age is 66 years. I live of Wight County in my residence & a brother of the plaintiff and also of

Barnes }
25. } In Aug.

Duck et al.

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March 25th 1881.
Came to land under
seal and filed.
Test. A. P. Young clk.

1 who pulled this affair, and ^{who} was the Attorney
2 for all the parties,

3 Martha A. Barnes

4 The foregoing deposition of Mrs Martha
5 A Barnes, was sworn to and subscribed
6 before me G. J. Parker, Notary Public for the
7 County of ~~Hartford~~ and State of North Carolina
8 at the time and place mentioned in the
9 Caption,

10 Witness my hand and official seal this
11 the 17th day of March A.D. 1881

12 G. J. Parker Notary Public
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LEWIS & BAILEY
Law Book Bids.
Baltimore, Md.

29th ques.

1 Please state when and by whom
2 and in what way were you
3 informed of any thing being said
4 to the contrary - referring to your language
5 in last answer;

Answer

6 When my attorney went to settle in a friendly way
7 and get my portion, as I was not able to go myself
8

30th ques.

9 Did your Attorney bring you any
10 message in regard to said lower
11 land from either of your brothers
12 and if so from which one?

Answer

13 No, they sent me no message
14

31st ques.

15 Did he inform you anything in
16 regard to what either of your
17 brothers said with reference to
18 said land?
19

Answer

20 He told me, that he was surprised, and
21 pleased, and would push the thing through
22 as soon as possible.
23

24 Re-direct Examination by Plain Off^r
25 Counsel.
26

1st ques.

27 State whether you were lead to ^{at the time you signed} ~~believe~~ ^{assent} "x"
28 ~~believe~~ by any one, that the
29 land covered by the Deed ~~would~~
30 would have to be divided ^{of the} ~~at the~~
31 Death of your Mother, if so, by whom?

Answer,

I was lead to believe so, by Mr Kelly my attorney
over.

25th ques. What ^{was} your Mother's dower valued at?

Answer 3 \$2333—

26th ques. When did your Mother's right in said land end?

Answer 8 at her death,

27th ques. ~~Did not her dower~~

27th ques. 10 To question 30^{in answer in chf}, your answer is 11 \$7000 - Was that land so valued 12 by the heirs or by ~~some~~ some 13 others? 14

Answer 16 It was the heirs & Commissioners Galt. I 17 reckon, I had no voice in it, My Bros' 18 with the Commissioners said so & I had to 19 submit,

28th ques. 20 You have said that all the heirs 21 understood the remainder in the 22 lands covered by your Mother's 23 dower was to be divided 24 at her death between her 25 children - Please state ~~how~~ 26 why you think or know your 27 brothers so understood? 28

Answer 29 Because, the Commissioners said so, and all the 30 parties sanctioned it, & the idea was always held 31 out to me by the heirs interested, and there was never any thing said to the contrary until after Mother's death.

21st ques.

When you signed paper X did you regard it a final settlement as to a division in your father's real estate?

Answer

I did not.

22nd ques.

Please examine paper "X" carefully now, and state what parts of said paper caused you to think there would be another or ^{further} division of your father's real estate?

Answer

Because my Mother's dower was ~~that~~ valued twenty three hundred & thirty three dollars which was only hers her life time, at her death it came back in my Father's Estate to be divided among his heirs,

23rd ques.

Please state what in said paper "X" caused you to think that your Mother's dower valued at \$233 34, came back in your father's estate at her death?

Answer

Because, it was not intended for one heir to have a double portion, and further that his portion was equal to one of the heirs, excepted to by Defendant's Counsel because not responsive to question.

24th ques.

23rd question repeated -

Answer

Because it was the understanding that it was to be my Mother's her life time, & at her death to be divided among us all, excepted to on same ground as above -

17th ques.

Does not paper "X" allot to your brother Jos. H. Duck the said Home place after deducting the "value of Sower"?

answer

The paper X assigns him a portion only of the home place,

18th ques.

State what portion paper "X" allots to Jos. H. Duck of said Home place?

answer

That portion only that didn't belong to my Mother.

19th ques.

What do you understand by the word "Remainder" in question 9 of Examination in Chief?

answer

I mean my Mother's part, that she held ~~at~~ during her life time, which was to come back in my Father's Estate, after her death, to be divided amongst his heirs.

20th ques.

Was it known to you that your brother Jos. H. Duck wanted the Home place as his share of your father's real estate?

answer

It wasn't known to me; I never saw him express himself,

13th ques.

In answer to ques. 6 in examination
in chuf you refer to an agreement
made by Commissioners - please
state who these commissioners were
and was that agreement made
in writing?

Answer

Capt ~~Wm~~ Barnes, Alford R Butler,
Mr Vaughan, & I don't remember the others.
I cannot tell whether it was in ~~writing~~ or
not, it has been so long ago. I can't remember
for during the late war, but that was the
understanding,

14th ques.

Was the agreement last referred to the
same as the one known as paper
"X" filed as an exhibit in this
suit?

Answer.

The same idea was given in both agreements,

15th ques.

Did you sign agreement "X" aforesaid,
and if so when & where?

Answer.

I did, at Carroll. in 1869, October,

16th ques -

Please examine paper "X" and point
out the part or parts that led
you to think when you signed it
that it, that your mother's "dower"
was to be divided between you &
your bro. at her death?

Answer

Well because her dower ~~was~~ is separate from all the
rest, on said paper X,

9th ques.

Why did you not inform your brother Jos. H. Duck soon after your mother's death that you intended to claim a portion of the said Home place; and state whether you were advised to do so?

Plaintiff's counsel excepts to this question as being irrelevant to the issue and immaterial.

Answer

I claimed it as my own right, knowing that to know it was my right, I did not ask advice thinking I had a right to it,

10th ques.

Showing you had a right to a share in said "Clover", as you say, please state why you did not set up your complaint before the year 1880? Plaintiff's counsel excepts for same reason as to Ques. 9.

Answer

I did three years ago through my Attorney B.B. Winborne, because I was not able to go and attend to it myself,

11th ques.

Did Mr. Jos. H. Duck send you any message through your att. Mr. Winborne? And if so what?

Answer

I have never recd any Message from him

12th ques.

Did you enquire about direct your said att. to inform Jos. H. Duck that you claimed any real estate in said Home place?

Answer

I did,

6th question.

12

Why did you not notify your brother Jos. H. ~~such~~ before instituting a suit against him?

Plaintiff's Counsel excuses to this question as irrelevant and immaterial.

Answer

Because when my ^{Mother} ~~old Brother~~ died my older brother took charge of the papers & I wrote to him repeatedly for help from my Mother's Estate, but he, ~~late~~ Brother Edwin took no notice of me or gave me any assistance, and I was very poor, and very feeble, not able to go down to get my portion, and I hadn't the money to take me down there.

Excepted by Defendant's counsel as much of above answer as is not responsive.

7th question

Then state, please what first led you to institute this suit?

Answer

Because I could not get my Brothers to settle without it,

8th question

In your answer to "ques. 2" ^{you say} "I have not seen (or heard from) them at all since my mother's death except two letters to my oldest brother. state whether those letters were merely friendly or otherwise?"

Answer

Friendly letters, through the older Brother,

Corros Examined by Defendants Counsel

1st. ques.

When did your father & mother die?

Answer

My Mother died in August 1875. and
my father died in the year 1863

2nd ques.

State how often since your father's death
you have seen or heard from your
two brothers? Since your Mother's death?

Answer.

I lived in the vicinity about Eight years.
I have not seen them at all, since my Mother's
death, except two letters from my oldest
brother,

3rd. ques.

State which of your brothers brothers is
the older? and what was the purport
of the the two letters? and when
were these letters sent?

Answer

Irvin W. Sick, Nearly friendly letters
I could not tell.

4th ques.

Then you have neither seen, nor heard
anything from your brother Jos. H. Sick
since your Mother's death have
you?

Answer

No, ~~though my older brother~~

5th ques.

Have you any ill feelings whatever
against your brother Jos. H. Sick?

Answer

I think he is trying to defraud me out of
my rights?

30th Ques. 1 State what the ^{whole of the} real estate of your
2 Father was valued at by the heirs?

Answer 4 Seven thousand dollars

31st Ques. 6 State how much ~~of~~ the part allotted to
7 you was valued at?

Answer 9 Fourteen hundred dollars,

32nd Ques. 11 Was that in full of your share?

Answer 13 Exceptive to become leading
14 That was in full of my share of the Land,

33rd Ques. 15 Did you ever receive any money
16 in addition to the land, if so, and
17 for what was it paid? and the
18 amount?

Answer 20 Yes, in the division of the land I rec'd
21 One hundred & fifty five dollars & sixty seven
22 Cents, to make ^{land} mine equal with my
23 Brothers,

34th Ques. 24 What was the land covered by the
25 Deed valued at? in agreement "X"

Answer 27 Twenty three hundred thirty three dollars
28 ~~thirty~~

35th Ques. 29 What part of the real estate of your Father
30 has been divided between you and
31 your Brother, and what ^{part} is undivided?

Answer The part, that has been divided, was all
Except Mother's share,

26th Decr 1 State your understanding of the
2 agreement - "X" in reference to the
3 land covered by the Dower of your
4 mother?

Answer, 6 My understanding was, that at her death, the
7 lands would be divided among the three
8 heirs,

Excepted to - because not responsive in that
10 it does not state the witnesses understand-
11 ing "of agreement 'X'"

27th Decr 13 My question was, that you state your
14 understanding of the Agreement "X" in
15 reference to the land covered by the
16 Dower - you will please now state
17 it.

Answer 18 My understanding is, in reference to that, that
19 at my Mother's death, that I should get
20 my part of her Dower,

28th Decr. 21 Under the agreement "X" what part of the
22 "Home Place" was intended to be allotted to
23 J. H. Duck.

Answer 25 The part, next to the Big Field,
26 ~~was~~ the part next to the Big Field any
27 part of the land covered by your
28 Mother's Dower?

Excepted to because leading in form
30 and tending to indicate the
31 desired answer.

Answer ~~Yes it was a part covered by the Dower~~
No, the land next to the Big field was not covered
by the dower,

23rd Dec.

1 State whether there has ever been any
2 such agreement at any time be-
3 tween you and the defendants
4 or either of them?

5 Excepted to because leading &c.

Answer

6 There has been any such agreement, or any
7 such thing mentioned to me, about such agreement,

8 Excepted to - so much of above answer as
9 is not responsive to question put -

24th Dec.

10 State whether the land covered by the
11 Dower of your Mother has ever been
12 divided between the heirs?

13 Excepted to because leading in that

14 the question indicates the answer &
15 the terms in which said answer is
16 to be clothed - the witness in none
17 of answers using the words "covered
18 by dower" unless so indicated -

Answer

19
20 No, it has never been divided.

25th Dec.

21
22 State whether you have ever conveyed or
23 relinquished ^{to any one} your interest in the land
24 of your Father's estate which was covered by
25 your Mother's Dower?

26 Excepted to. because leading

Answer

27 W. W. W.

28 Plaintiff's counsel claims that the exception
29 of defendants' Counsel to above question should
30 be allowed, as it was too late, he not making
31 it until after answer by witness.

Answer That? What I mean, I mean ^{the lands not} exactly covered
by the Dower,

20th Ques. In your answer to Question 18 you
used the words "the land outside the
Dower", please explain what you
mean by those words!

Answer I mean, the lands that was divided among the
sirs. Not subject to the Dower, that is
exactly what I mean as plain as I can make it,

21st Ques. State whether it was the intention of, and so un-
derstood by, the parties to agreement "X" that in the
partition of the land between the heirs as therein
shown - to make, ~~an~~, partition of the
land covered by the Dower of your
mother?

Excepted to - because leading and because
it assumes that the lands covered
by said dower is omitted in
paper "X".

Answer No, it was not,

22nd Ques. State whether in the division of the land
under agreement "X", it was agreed and
understood by the parties to said agreement
that the remainder after the life estate
of your mother in the lands covered by her
Dower, should vest in J. B. Duke?

Excepted to because leading and seeks to elicit
a definite answer.

Answer No,

16th Ques. 1 How many agreements did you ever
2 sign in reference to the division of
3 your Father's land.

Answer 5 only one, and that before my Mother's death,

17th Ques 7 State whether in said division of the land
8 as shown by agreement "X", that part of
9 the Home Place which was covered by the
10 Dower of your Mother has ever been
11 divided between you and your brothers?
Excepted to by dependent counsel because lead-
13 ing in form and because it makes
14 assumption which the witness has
15 positively denied in answers 10, 11
16 & 12,

Answer 18 No, it has never been divided,

18th Ques 20 Please state your understanding of the
21 agreement "X" at the time you signed
22 the same, in reference to ~~that~~ the
23 land covered by your Mother's Dower.

Answer 25 My understanding ^{was} that ~~the~~ it was the
26 land outside of the Dower, NOT the land
27 covered by her dower,

19th Ques. 29 If you mean by words "outside
30 of the Dower" to say the land ^{not} covered
31 by the Dower, please so state it?

Excepted to - because leading and because tending
to elicit a definite answer and because it
asks a legal opinion of paper X of the
witness -

and that portion belonging to my Mother
was not brought in.

12th Ques. What do you mean, ^{by the words "by"} belonging
to my Mother?"

Answer I mean that portion that was her
thirds,

13th Ques. Do you mean that part of
the land covered by the Deed
of your Mother?

Expected to by defendants counsel because
leading and seeks to indicate
some particular and definite
explanation of preceding answers
etc, & also to suggest the answer
to "ques 18"

Answer I do,

14th Ques. Did you ever sign any other agree-
ment in reference to the division
of the said lands of your Mother, except
agreement "X"?

Expected to because leading-

Answer No other

15th Ques. State whether you ever signed any
other agreement, except agree-
ment "X", in reference to the division of
your Mother's land?

Expected to on same ground as before

Answer No other

Mother's Acre, then the Enna place
the Butshaw place, the Peg place, the
Elijah place, the Abby place, and the house
on Lot in Suffolk,

9th Dec.

State whether the remainder in that
part of the "Home Place" which was
covered by your Mother's Acre
has ever been divided between
said heirs?

Answer

No, never,

10th Dec.

Examine this paper writing which I had
had you, marked "X" and dated Oct. 15th
1869 and filed as part of the answer
of the defendants in this case,
and state whether you ever signed
such an agreement with the parties
whose names appear thereon.

Answer

I signed the agreement to settle the Estate
between my two Brothers & myself, outside
of my Mother's Acre, which was never brought
in, with any settlement or agreement,

Excepted to by Defendants. Counsel because it (ans
wer to ques. 10th) does not respond at all
to the question but

11th Dec.

Please examine said paper writing and
state whether you ever signed such
an agreement with Jos. & Irvine Dwell?

Answer

I signed paper X. with the understanding that
that ^{settled} settlement between my two Brothers and
myself, that portion of my Father's Estate
belonging to us.

over

to be divided among ~~his~~ us all,
excepted to. Is being responsive to question
put so much of the above answer
as alludes to an understanding
between commissioners John R.
Kelly &c. &c.

7th Dec.

You stated in your answer to Dec.
6 that after the death your Mother
her third was to be divided among
you & your two brothers. Please ^{state} what
you meant by "her third" - that is,
state whether you intended to say
that that part of the land covered
by your Mother's Dower was not
divided as the balance of the
land was?

Excepted to by defendant's Counsel because
leading in form and also assumes
that the deponent has made certain
statements which, we think, do not
appear in her answers.

Answer

That part of ~~my~~ Dower by my Mother's
Dower, was not divided, but was to be
divided between us. at her death,

8th Dec.

Please state what part of the land
of your Father which descended at
his death to you & the defendants
has been divided between you
and your brothers Jos. & Irvine Dwyer.

Answer

A portion of the home place, outside of my

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Law Bookbinders,
Baltimore, Md.

2

4th Ques. 1 State whether your Father died in
2 Estate, if so, state whether you and
3 your said Brothers came in
4 possession of any land and
5 tenements as his heirs at law?
6

Answer 7 He died without a Will, and we came
8 in possession of his Lands & property, outside
9 of my Mother's thirds,
10

5th Ques. 11 If you can, will you please to
12 describe the said land while
13 descended to you & your Brothers as
14 the heirs of your Father?
15

Answer 16 The Abby place, the Mann place, the Bradshaw
17 place, the Peg place, the Elijah place, and
18 a house and lot in Suffolk Co, and his
19 residence when my Father died,
20

6th Ques. 21 State whether said land has ever
22 been partitioned among the heirs
23 at law of your Father viz, you &
24 your two Brothers?
25

Answer 26 Yes, it has been divided, my Mother's thirds
27 was laid off - and the balance divided
28 between my two Brothers, and myself with
29 an understanding from the Commissioners, that
30 said it of, and my lawyer Mr R Kilby Esq
31 of Suffolk Co, that at his death his portion

No 1

CUSHINGS & HALEY
Law Bookellers,
Baltimore Md.

No 1

1st Ques- 1 State your name, age, residence
2 and occupation?

Answer 3 My name is Martha A Barnes, of Hartford
4 County, N.C. ~~for~~ on a small poor farm
5 My occupation is nothing, ~~for~~ I am not
6 able to do anything, Sixty three years old
7 and broken down in health,

Excluded to by Defendants counsel so much of the
8 above answer as not responsive to
9 question but especially the clauses
10 "on a small farm" "My occupation is
11 nothing" - for I am broken down
12 in health not able to do anything"
13 "broken down in health" - on the
14 ground that these are not respon-
15 sive and are concerning matters
16 irrelevant to the issue.

2nd Ques- 18 State the names of your Father
19 and Mother, and where were you
20 raised?

Answer 21 My Father was named Jacob H Duck,
22 Nancy B Duck was my Mother's name,
23 and their residence was in Deep Water
24 County, N.C. when I was raised,

3rd Ques- 25 Did your Father have any other
26 child, him surviving, except your-
27 self, if so, please name them?

Answer 28 He left two sons, Irvin W Duck, and
29 Joseph H Duck, they were the only ones
30 except myself,
31

State of North Carolina }
Hertford County } Town of, Musgrave,

Pursuant to the annexed Commission to
me directed, J. G. Parker, a Notary Public
of Hertford County, and State of North Carolina
under the authority thereof, on the 17th day
of March A.D. 1881, at the law office of
B. B. Winborne Esq. in the Town of Musgrave
County of Hertford and State of North Carolina,
both parties being represented by their
attorneys, B. B. Winborne Esq. for Plaintiff
and Holland Esq. for Defendants
I did proceed to take the deposition of
Mrs Martha A Barnes, who being first
duly sworn, on the Holy Evangelist,
to speak the truth, the whole truth,
and nothing but the truth, between the
parties named in the said Commission,
deposes as follows

over

Use accept service of the within notice
Mar. 7th 1881.

C. B. Hayden Atty for Debt -
W. S. Holland

Joseph A.

To J. W. Duck and Jacob Duck

Take notice, that we shall, on the 17th day of March 1881. at the office of Winborne in the town of Murfreesboro North Carolina between the hours of 6 A. M. & 6 P. M. of that day proceed to take the depositions of M. A. - Barnes and others to be read as evidence in our behalf in a certain suit in equity depending in the Circuit Court for the County of Giles & Wight wherein you are defendants and we are plaintiffs; and if from any cause, the taking of the said depositions be not commenced on that day, or if commenced be not concluded on that day, the taking of the same will be adjourned & continued from day to day or from time to time at the same place & between the same parties until the same shall be completed

Respectfully Yours

M. A. Barnes

per Withers & Denton & Cusey
Attys:—

Barnes } In Chy.
vs. }
Duck et al.

Commission to take
Depositions.

Commonwealth of Virginia

To any Commissioner appointed by the Governor
of this State, or to any Justice or Notary Public
of the State of North Carolina. Gentlemen: Greeting:

Know ye that we trusting to your fidelity
and provident circumspection in diligently examining
Martha A. Barnes and others witnesses in behalf of
Martha A. Barnes in a suit in Chancery now
depending in our Circuit Court for Isle of Wight
County, between the said Martha A. Barnes Complainant
and Joseph H. Duck and Irwin W. Duck Defendants,
requests you that on the seventeenth (17) day of
March 1881 at the office of B. B. Winborne in
the town of Murfreesboro, North Carolina, the
witnesses aforesaid before you, you cause to come
and diligently examine on the Holy Evangelists
of Almighty God, and then examination unto our
said Court distinctly and plainly without delay you
send and certify enclosed, returning this writ.

Witness A. P. Young Clerk of the Circuit
Court of ~~Carroll County~~ Isle of Wight
County, Virginia this 10. Day of March
1881.

A. P. Young Clk.

Bill of Cost;

Notary fees & postage \$5.00

M. Barnes

900. 3/4 in clay.

Jos. St. Duck &

also.

Receipt of the
letter to the
dept. on a
conspicuous

Filed 9th of

Feb 882.

M. P. Young & Co

Received of Jos. H. Duck in settlement
of Chancery suit pending in Dist of Wash
Circuit Court Three Hundred and Four
Dollars and Fifty - Cents \$324.50 in full
of said compromise of said suit
as per agreement. He the said Duck
to pay costs of said suit to M. P. Bangs
Clerk of said Court, and Mrs Barnes
by her Counsel agrees to dismiss all
further proceedings for her interest in
the above lands of her mother and
to make with the said J. H. Duck such
title to her interest as may be legal
& that she may have.
Jan. 20th 1882.

Witness a Hand
Atty for Mrs. Barnes.

Barnes

¹²
Cruckshole

Crocker

Oct 7th 1880

Zachariah

Geo. B. Bland

Entered 39

Barnes

^{vs}
Buck et al

On motion of
the Defendant Joseph A Buck
he is allowed to file his answer
in this case within Ninety Days;
For all other purposes this case is
continued

Martha A. Barnes

N. Drereed

Jos. H. Duerk & Co.

Apr. Term 1881

To be enclosed

Geo. H. D. -

Entered 15

their actions under this Decree -

And for all other purposes this Cause is continued, and this Decree is not to prejudice Joseph H. Smith's right to contest the title of the standing tract of A. Barnes to the said real estate or any part thereof. -

Martha A. Barnes

^{12.}
Joseph H. Duck and Irwin W. Duck -

This cause came on this day to be heard upon the Bill and the Exhibit therewith filed, ~~and~~ the Answer of Joseph H. Duck, the answer and disclaimer of Irwin W. Duck, with general exceptions to said Answer, the Depositions of witnesses, and was argued by Counsel. On consideration whereof the Court doth adjudge order and decree that William E. Barnes, Edward Runk, William R. Kuchan, J. J. A. Cuthkin and John A. Ireland, any three or more of whom may act, be and they are hereby appointed Commissioners, whose duty it shall be to assign unto the plaintiff Martha A. Barnes one equal third part ~~of~~ ^{as dower} in value of the real estate assigned to Mrs. Nancy Duck widow of ~~James~~ Jacob H. Duck deceased in the Bill in this suit described if the said real estate be divisible in kind with advantage to the parties in interest, and if the said real estate be not divisible in kind, they shall report this case to the next term of this Court together with

Barnes

v. 3 Final order

Dues. 7th

20. April 1882

Enter. -

£ 1. 15. 0.

~~Papers sent out
of the office
delivered to
Barnes~~

~~Apr 1882~~

Entered 10

Barnes

v.

Duck and others. -

~~This~~ By consents this cause
is ordered to be taken from
the docket, and is considered by
the Court that the Complainant
recover of the defendant Joseph
H. Duck her costs by her about
her suit in this behalf expended.

and stables.

Given under our hands this 7th of
December 1864.

A. E. Butler

W. C. Banner

W. H. Vaughan

Edward Bawes

In the County Court of Islet
Wright County, March 6th 1865.

The foregoing report of docket
in hand, having been filed on
motion and no exceptions made
thereto, was confirmed and
ordered to be recorded.

Teste.

Scopes

Teste.

N. P. Younger

W. D. Edwards D. C.

Harvey B. B. B.
Rept. of Docket

copy

"Exhibits No. 1
with Bills

Martha A. Barnes

"

John W. & J. W. D. D.

"This and Sept. Price.
Sept. Dec. 1865

Pursuant to an order of the
Board of Commissioners of the
County of Ischewright,
bearing date 5th September 1864,
we the undersigned Commrs.
after being duly sworn, have
proceeded to view the lands
of Jacob St. Owen died. and
after careful examination
have set apart to the widow
Maey Owen, one square third
part of said lands, having
regard to quantity & quality.
Beginning as follows; Commen-
cing at a large branch, &
running up a cross fence to
the young orchard, and thence along
the fence to the garden, and
thence along the gang railing
to the barn fence, and thence
along the barn fence on the north
side to the road, and straight to
the branch, and thence down
the branch to the Beaver dam
swamp, and thence down the
said swamp to a large branch
and up the branch to the
big spring. with the privi-
leges of the site of the barns

as copies
Teste.

W. A. Edwards D.C. for
H. O. Younger

Duck et al.

3 Copies against
v. X. filed 18th
Oct. 1869

Duck

"

Fee for this 35[¢]

H. Duck share be as follows:

To Irvin W. Duck	\$1600.00
" J. H. Duck	" 1500.00
" Martha A. Barnes	" <u>1150.00</u>
Total	\$ <u>4250.00</u>

Each Share \$1416.66

To be paid to Martha A. Barnes
to equalize her share as follows.

By Irvin W. Duck	\$184.34
" J. H. Duck	\$ <u>82.66</u>
	\$ <u>266.00</u>

And we agree that a decree
that may be entered accor-
ding to the foregoing state-
ments in the case now
pending in the Circuit
Court of Schofield County
wherein J. H. Duck &
Martha A. Barnes are
plaintiffs and Irvin
W. Duck defendant.
Given under my hand
October 15th 1869.

Martha A. Barnes
J. H. Duck
I. W. Duck

Acto. 18th 1869

Brought over

\$1555.67. \$4667.00

Assigned to Dr. in a

Dr. as follows.

The Bradshaw &

Emm place valued

at \$200.00

The peg place at 300.00

"Elijah" 600.00

\$1100.00

To Receive of

J. H. Duck

Cash 455.67 \$1555.67

Assigned to J. H. Duck

The Horn place

at 4500.00

Debet value of dues 2333.00
2167.00

To pay Mrs. M.

R. B. Amos \$155.87

+ To pay J. H. Duck 455.67 \$611.34 \$1555.66

\$4667.00 \$4667.00

We further agree that the acct.
of advancements made to
each by our father Jacob

10 annos et ae.

2 3 Copy Wre
Oct. 1869.

Dec 10

agreement marked X
be recorded in an order
book of this Court, and
nothing more remaining
to be done in the case
it is ordered that the same
be removed from the
docket.

Attest
Dated

W. A. Edwards D.C.
for H. P. Young

five five dollars and
sixty seven cents, with int.
thereon from 1st July, 1865
till paid, being difference
in the divisions of the
land of Jacob St. Duck
deed. And the Court
by authority of said
agreement, doth adjudge
order and decree that
Irvin W. Duck pay to
said Martha W. Barnes
the sum of one hundred
and eighty four dollars
and thirty four cents.
with int. from this day,
and that the said Joseph
St. Duck pay to the said
Martha A. Barnes the sum
of ~~fifty~~ ^{eighty} two dollars
and sixty six cents with
int. from this day, and
that each of said Joseph
St. Duck, Irvin W. Duck,
and Martha A. Barnes
pay one third the costs
of this suit. And it is
ordered that the said

In the Circuit Court of
Shrewsbury County the
19th of October 1869.

Joseph H. Drake of James Barnes
and Martha A. his wife who
was Martha H. Drake Compl.
vs Dr.

Irvin W. Drake Def.

This cause came on this
day to be again heard by
consent of parties on the
papers formerly read, and
on the examination of witnesses,
and on argument marked
"X". This day filed by consent
of parties, and was argued
by counsel; on consideration
whereof, the Court, by consent
of parties, doth confirm the
agreement, and doth advise,
order and decree that
Joseph H. Drake pay to Martha
A. Barnes the sum of four
hundred and fifty five dollars
and sixty seven cents, and
to Irvin W. Drake the sum
of four hundred and fifty