1883-013 Chancery Causes: John H. Babb vs Benjamin Babb, by &c

Isle of Wight County

John H. Babb, gdn of Benjamin Babb vs Benjamin Babb, by &c &c

other surnames: Roberts, Bradshaw, Raiford, Eley, Kitchen

made and executed to said B. E. Roberts by your Complainant shall convey all the interest of said Benj. Robb and that your Complainant as guardian for said Benj. F. Robb shall hold 1/7 of $500 for the legal costs of this suit in hand for said Benj. Robb.

And your Complainant prays such other and further general relief as is meet in Equity and agreeable to good conscience and your Complainant will ever pray. Etc

Richmond & Talcott
Solicitors for Complt.

Wm. H. Tabb
et al
vs.
Benj. Robb

Complaint

March Rules 1882
Bill & exhibit. Subpn. and
alias subpn. etc issued
this cause filed.
= a/c Rs. 1882. att'y for
Complt. on affidavit
Oct. 1883. Dismissed
at Plff's cost.

hundred dollars to the legal costs and expenses of this suit.

That your complainant regards the sale he has made a good one and is satisfied that when said saw mill is moved from the immediate neighborhood this property would not sell for so much.

That your complainant is the the duly qualified guardian of said Benj. Bobb his brother and has executed his bond in the penalty of one hundred dollars with surety as will appear by a copy of same hereto filed marked "A" and asked to be read as a part of this bill.

And whereas your complainant is remediless save in a court of equity he prays that said Benjamin Bobb be made a party defendant to this bill and that a guardian ad litem be appointed to defend him in this suit. and that said sale to B. E. Roberts be confirmed and that the said

land except from his brother
the said Benjamin Bobb who is
an infant under the age of 21
years.

That said widow has had her
dower assigned to her as will
be shown by report of Comrs.
for that purpose a copy of
which is herewith filed Marked "B"
and prayed to be read as a part of
this bill.

that your complainant finding
an opportunity to sell said property
to B. L. Roberts who had erected
a saw mill near said premi
ses, has sold B. L. Roberts said
property as will appear by
a writing herewith filed mark
ed "C" and asked to be read as
a part of this bill, that your
complainant paid fifty dollars
for share for the five shares of his
adult brothers and sisters —
that your complainant is willing
to pay to said Benj. Bobbs guardi
an one seventh of the net proceeds
of sale of said property, that
is to say one seventh of five

To the Honorable Geo Blow
Judge of the Circuit Court for
Isle of Isle of Wight County;

Your Complainant Jno. H.
Babb of the County of Southamp
ton humbly complaining doth
represent to your Honor—

That about the year 1868
your Complainants father Jno.
Babb departed this life intestate
leaving a widow and and
seven children, your complainant,
Jenora V., Anna B., Judith, Eliz
abeth A., Cornelius J., and Benja
min Babb, the last of which is
an infant, seized and possessed
of a tract of land containing
about 113 Acres bounded and
described in papers herewith filed.
That your complainant has
purchased, as shown by deed
duly recorded a copy of which
is herewith filed marked "A"
and asked to read as a part
of this bill, and the right title
and interest from all the parties
aforesaid and the Commissioners
thereto married in & to said

that a guardian ad litem be appointed to defend him in this suit. That Renova M. Bradshaw who was Renova M. Babb and Jones M. Bradshaw her husband, Anna B. Raiford who was Anna B. Babb and Wills E. Raiford her husband, E. L. Babb and Judith Babb his wife and Elizabeth Babb were made parties defendants to this bill and required to answer the same -

The prays that said sale to B. L. Roberts be confirmed, that your Complaint hold for said Benjamin Babb one seventeenth of the proceeds of said sale as his guardian - That said undivided share in said land to said Benj. Babb belonging be sold - That such other and further relief be granted as is agreeable to good conscience and meet in equity And your Complainant will ever pray -

let a subpoena go -
W. J. Holland J. P.

Virginia

John H. Babb ±

Southampton county, to wit,

I M Lankford, a Justice

in and for said County do certify that John H. Babb whose name is signed to the foregoing bill personally came before me this day in my county and made oath that the statements contained in said bill are true to the best of his knowledge & belief. Given under my hand this the 29 Sept. AD 1882

M. Lankford J. P. -

need of the value of said land, (3) there is at present a steam saw mill located near said land which on account of the lumber thereon renders said land much more valuable now than when said saw mill is removed, (4) that unless said land is sold the owner of other shares will be compelled to bring his suit for partition.

That your complainant has bought all the shares in said land except dower interest as aforesaid and the right of said Benj. Babb as will appear by reference to a deed herewith filed marked "H" and asked to be read as apart of this bill - that B.C. Roberts a saw mill man who owns the steam saw mill aforesaid offers five hundred dollars for said tract of land that your complainant considers the same a fair price for said land, has agreed to sell his interest (3/4) as aforesaid for said sum provided the whole tract less dower can be sold. This said agreement between said B.C. Roberts and your complainant is herewith filed marked "C" and asked to be read as a part of this bill.

And whereas your complainant is remediless save in a court of equity where such matters are cognizable he prays that said Benj. Babb be made a party defendant to this bill and

To the Hon. Geo. Blow judge of the Circuit Court for Isle of Wight County:

Your Complainant John H. Babb Guardian of Benjamin Babb an infant under the age of 21 years. humbly complaining doth represent to your Honor.

That about the year 1868 the father of your complainant and his ward the said Benjamin Babb departed this life intestate seized and possessed of a tract of land in the County of Isle of Wight containing one hundred and thirteen acres more or less bounded and described in Exhibits hereinafter referred to, and leaving seven children, the youngest of which is said Benjamin Babb, and a widow.

That said Benjamin Babb is seized and possessed of one undivided seventh part of said land less the dower interest of said widow whose dower has already been assigned to her as will appear by reference to a paper herewith filed marked "A" and asked to be read as a part of this bill - that in the judgement of your complainant a sale of said land would be decidedly advantageous for three reasons - (1) said share out of in kind would be worthless; (2) said infant has no other property and is in

~~Benj. D. H. Babb~~

~~Deft.~~

&

Jno. N. Babb

et. 3/5 Inclu.

Benj. Babb

Defts. answer

Files March Rls 1852

The separate answer of Sarah
Wimm Babb by ~~W. W. Symmes~~ A. N. Atkinson her
guardian ad litem assigned
to defend him in this suit, to
a bill exhibited against him
in the Circuit Court for Dade County
of ~~aught~~ by John A. Babb et
et als.

The respondent reserving to himself
all but exception to said bill for
answer thereto or to such thereof
as he is advised it is material
to answer, answers and says:

That he is an infant of ten
(10) years, and by reason of his
infancy is incapable of forming
or understanding his rights in this
suit, and therefore he by his said
guardian commends himself, his
rights and interests to the protection
of this Court. And says that no
decree may be pronounced that will
tend to his prejudice.

And having fully answered your
respondent prays to be hence dismissed
with his reasonable costs and charges
expended, and he will ever
pray &c.

A. N. Atkinson
Sol. for Def.

Schuyl. Bank

W. 3 Drafts &
3 and Bill
six days.

Benj. Bank on sight.

Fo March 7th 1857.
U.S. Holland Esq.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ISLE OF WIGHT COUNTY--GREETING:

You are hereby commanded to summon Benjamin Babb, an infant

if he *be found within your bailiwick, to appear at the Clerk's Office of our Circuit Court, for our said County of Isle of Wight, at the Rules to be holden for the said Court, on the first Monday in* March 1887 ~~*next,*~~ *to answer* the Bill in Chancery of John Babb

And have then and there this writ. Witness, **NATHANIEL P. YOUNG,** *Clerk of our said Court, at the office aforesaid, this* 2nd *day of* March 1887, *in the* 111th *year of our foundation.*

N. P. Young *Clerk.*

The depositions of A. H. Ely and others taken before me Thos. J. Clement a Notary Public for the County of Isle of wight and State of Virginia at the office of W. S. Holland in the County of Isle of wight at Windsor on the 13th day of October 1882 between the hours of 6. A.M. & 6. P.M. to read as evidence on behalf of Jno. H. Bobb. &c. in a suit in Equity depending in the Circuit Court for the County of Isle of wight wherein John H. Bobb. &c. plaintiff and Benj. F. Bobb et als are defendants —

Present

W. S. Holland Counsel for Plff —
A. N. Arline Gen ad Litem
for Benj. F. Bobb

Virginia

County of Isle of Wight, to wit:
I, Thos. J. Clements a Notary Public for the county aforesaid in the said State do hereby certify that the foregoing depositions were duly taken, sworn to, and subscribed before me at the time and place mentioned herein. Given under my hand this 13th day of October 1882 A.D.

Thos. J. Clements
Notary Public

Pltf. Book 4 pp. 21
12 Pltf. Books etc. filed
Depositions
Def. Wm. Ely et. als.

Comm. to take
Caudle and wife
filed 3 Oct. 14th 1882
Teste, J.W. Clements

Ans- I think the boat subject to dower which I helped to assign is not worth more than four hundred dollars making said infants share worth $57.14-
And further this deponent saith not

A. M. Eley

F. C. Roberts being duly sworn on the Holy Evangelist of Almighty God deposes and says

First question by plaintiff's counsel,
State your name, age, residence and occupation.

F. C. Roberts, aged 42 years resides in Isle of Wight county and by occupation a farmer and will further state that I have carefully read the questions & answers above propounded to A. M. Eley and answered by him and I fully endorse and adopt them as my own.

F. C. Roberts

would be advantageous for the following reasons:

1st. That the land in which said Benj. F. Bobb has a share is so small that a division in kind would be impracticable,

2nd That said tract ~~is tract~~ is rapidly coming to decay and ruin, by fences, rotting down, ditches filling up, and buildings falling to decay -

3rd That at present there is a saw-mill near said land on which there is a small body of timber, and if said lumber is not cut before this saw-mill is removed this lumber will be unsalable, and on this account the land at present will not to advantage,

4th That said infant Benj. F. Bobb is in special need of the proceeds of said land to educate himself -

4th question by some.

State the value of said land and the value of said Benj. F. Bobb's share.

A.M. Ely being duly sworn on the Holy Evangelist of Almighty God, deposes and says —

First question by counsel for plaintiff —

State your name, age, residence, & occupation

Ans. A.M. Ely, aged thirty years, residence Isle of Wight county and by occupation a lumber manufacturer.

2nd ques. by same,

State whether you are acquainted with the lands in these proceedings mentioned, also the plaintiff and his word?

Ans — I have lived in the immediate neighborhood to said land all my life and have known the plaintiff and his word all their lives.

3rd Question by same

State whether you think a sale of said Benj. F. Babb share in said land would be advantageous, and if so state your reasons.

Answer — I do most undoubtedly think that a sale of said share

At Rules to be held in the Clerks Office of the Circuit Court for Isle of Wight on the 6th day of March:

John L Bobb Pltfs

vs. } In Chancery—

Benjamin Bobb Dfts—

On Motion of Complainant by Counsel ~~A. F. Drewry~~ A. F. Prim. is assigned to aid Benjamin Bobb to defend him in this suit,

#

John H. Babb Guardian &c.

vs

Benjamin Babb et. als,

This cause come on this day to be again heard on the papers formerly read on the complainants Amended bill, infants answer by his guardian ad litem, depositions, and by consent of parties who have signified their ratification of and acquiescence by signing this decree below, and was argued by Counsel on consideration whereof the Court doth order adjudge and decree that the sale of the lands in these proceeding mentioned be confirmed as to said Benjamin Babb and W.S. Holland who is hereby appointed a Commissioner for that purpose join with said John H. Babb in making to said B.C. Roberts a good and sufficient deed for the lands mentined. That said John H. Babb guardian of said Benjamin Babb infant hold for his ward one equal seventh part of the proceeds of said sale.

Geo. M. Bradshaw

Anna B. Raiford

Judith Babb

Cornelius J. Babb

Elizabeth F. Babb

Benjamin Babb.

John H. Bobb &c.
vs
Wm Thompson –
Bill for Bobb injun

Order

April Term 1882

To be entered

Geo. Shows.

Entered 4/9

John H. Babb
U. S. In Chancery
Benj. F. Babb

This cause coming on this day to be heard on a motion of the plaintiff leave is granted him to file an Amended bill and take depositions in support of the same.

John A. Bobb
Dr. Jr. Chancery
B.F. Bobb, infant

decree
April Term 1882
To be entered

John H. Babb — Pltf.
vs. } In Chancery
Benj. F. Babb, an infant — Deft.

This cause come on this day to be heard on the bill, answer of infant defendant by his guardian ad litem N. P. Young, exhibits filed a general replication thereto and was argued by counsel on consideration whereof the court doth order, adjudge and decree the sale by said John H. Babb to Benj. C. Roberts as witnessed by said contract filed in ~~these~~ papers be confirmed as to the said Benjamin F. Babb that the said John H. Babb shall pay to his ward the said Benj. F. Babb one equal Seventh part of the net proceeds of said sale that a deed made and executed by said John H. Babb to said Benj. C. Roberts shall pass and convey the interest of the said Benjamin F. Babb in and to said land. That the cost of this suit be paid out of the proceeds of said sale and this cause is hereby ordered to be dismissed from the docket.

Robb Jr. &
Vs

Robb's Infant

Decree

To be entered

24 Oct. 1858

Geo. T Blow.

Entered do 26

John H. Babb.
vs.
Benj. Babb infant.

This cause come on this day to be again heard and on the plaintiff's motion it is hereby ordered that this cause be dismissed from the docket at pltf's costs.

"C"

Virginia

County of Isle of Wight to wit:
I, W.S. Holland a Notary Public in and for the county and state afore said do certify that John H. Babb and Benj. L. Roberts whose names are signed to the writing hereunto annexed bearing date on the 27th day of February 1882 personally appeared before me in my said County and state and acknowledged the said writing and signatures. Given under my hand this 27th day of July 1882

W.S. Holland
N. P.

Authorizing Benj. Babb (who is now a minor) to execute a deed to the party of the first part for his interest in the said land — ~~This agreement does not bind the party of the first part to convey the dower interest in said lands~~
It is understood that this property is sold subject to the dower right of Mrs Martha A Kitchen —

It is further agreed that the party of the second part agrees to pay int. on the above five hundred dollars from the date of this agreement until they shall pay for said land, and is to receive all rents accruing from this date —

Witness
M.L. Watkins

John H. Babb Seal
Benj. L. Roberts Seal

Rec'd July 27th 1882 of B. L. Roberts One dollar in part pay for the Tract of land belonging to John Babb dec'd. and described in agreement of this date —
John H. Babb

This agreement made and entered into this 27th. day of Feby. 1882 between John H. Babb of the County of Southampton Va. of the ~~first~~ part and B. C. Roberts of the County of Isle of wight of the second part —

Witnesth, That for and in consideration of the sum of Five hundred ~~in hand paid~~ dollars, the party of the first part hereby agrees to sell to the parties of the second part that tract, piece or parcel of land formerly belonging John Babb dec'd. containing by Estimation One Hundred and Thirteen acres be the same more or less, bounded on the East & south by Thos. Jaynes on the west by Patrick Pierce and on the North by J. A. & E. A. Eley dec'd. The party of the first part agrees to make to the party of the second part a deed for the above discribed land, as soon as he can obtain a decree from Court

Report of assignment
of dower to Martha
Ketchum, late widow
of John Babb dec'd.

Octo. 3d Returned &
filed for exceptions

December 8th 1881.
confirmed & O.K.d

Y

Recorded D. Burch
No. 46 - fo - 230

In the County Court of
Benton County the
5th day of December 1881
The hearing report of
assignment of dower
was confirmed by the Court
and ordered to be recorded

Test
N. B. Mumpower
Clerk

oak (marked) standing side of the Path leading from Thomas Joyners to Jas. A. Eley, S; thence in a southerly direction in a line indicated by marked trees among which there is one large Mulberry tree to the swamp; thence along the run of said swamp to said path (Cart); thence along said Cart path to said white oak at the sterling point aforesaid with this further right to wit, that in case the aforesaid land fail in a supply the said dowers may go on the adjoining land of which said John Babb died seized and possessed for a supply of house bote, fire bote, & cart bote and fence bote. Given under hands this 13th day of Sept, in the year 1848.

J. M. Eley

(Seal)

Thomas C. Joyner

To the County Court of Isle of Wight County:

We A. M. Ely, Thomas Joyner and J. D. Branch three of the Commissioners appointed by said Court, a copy of the order thus appointing said Comrs. is herewith filed, to allot and assign to Martha A. Kitchen widow of John Babb decd Dr and for her dower by metes and bounds in the real estate of which said John Babb died seized and possessed one full and equal third part thereof in quality and quantity beg leave to make the following report: On the day of in the year 1881, your said Commissioners being first duly sworn according to law did proceed to set off by metes & bounds the following piece or parcel of land as and for said dower out the said lands of which said John Babb died seized & possessed lying the county of Isle of Wight and State of Virginia; to wit, Sterling at a little white