1921-002 Chancery Causes: J. F. Minton vs Mary E. Libby & Allie Rae Libby, by & c 245

Isle of Wight County.

other SURNames. Whitley, Libbey, BERRYMAN, Gwaltney, Cofer, WARREN, Thomas, Squire

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J. F. Minton

vs. Y#5

Mary E. Libby, et al

Bill

2nd September Rules 1916

Process returned executed.
Continued for Bill
T. H. Holloway for appellee
4 days to plead

3rd September Rules 1916

Continued for Bill

2nd October Rules 1916

Bill filed - Defendants not appearing. Decree nisi

1st November Rules 1916

Defendants not appearing
Cause set for hearing

Lett & Massie,
Attorneys-at-Law,
Newport News, Va.

FRANKLIN PRINTING COMPANY, NEWPORT NEWS, VA

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

J. F. Minton,

vs.

Mary E. Libby and Allie K. Libby, an infant under fourteen.

To the Honorable B. D. White,

Judge of said Court.

Your complainant respectfully represents unto your Honor that Margaret W. Libby was in her lifetime seized and possessed of a certain parcel of land, situate and being in Newport Magisterial District, Isle of Wight County, Virginia, described as follows: Containing by estimate two hundred and fifty-seven (257) acres, bounded by the lands of E. K. Batten, Sue A. Minton, Allan Johnson, the land belonging to the estate of Mills R. Minton, and what is known as West Mill Creek;

That the said Margaret W. Libby departed this life in the year 1900, and by her will dated January 22nd, 1887, and probated May 13th, 1913, she gave, devised and bequeathed to her husband, Alexander Libby, for life, all of her real and personal estate, including said farm, and at the death of her said husband, the said farm was given for life to her son, J. A. Libby, with remainder at her son's death, to his children, a copy of which said will is herewith filed as exhibit "A", and prayed to be taken and read as a part of this bill;

That the said J. A. Libby, life tenant, was twice married. By his first wife, he left surviving him, C. A. Libby

and Carrie G. Libby, and by his last wife, who still survives, Allie K. Libby, an infant under fourteen years of age, born after the death of the said Margaret W. Libby;

That J. A. Libby, Mary E. Libby, his wife, C. A. Libby and Della Libby, his wife, and Carrie G. Libby, by their power of attorney, dated the 9th day of January, 1913, duly recorded in the Clerk's Office of this Honorable Court, authorized and empowered George F. Whitley, as their attorney in fact, to convey all their right, title and interest in that certain tract or parcel of land above described, which said power of attorney is filed herewith as exhibit "B", and prayed to be taken and read as a part of this bill;

That by deed dated May 18th, 1913, the said J. A. Libby and Mary E. Libby, his wife, C. A. Libby and Della Libby, his wife, and Carrie G. Libby, by George F. Whitley, their duly appointed attorney in fact, did make, execute and deliver to your complainant, a general warranty deed, conveying the above described realestate, in which said deed, the said parties covenanted that they had a right to convey the said land to the said grantee, that they had done no act to encumber the title thereto, that the grantee should have quiet possession of the said land, free from all encumbrances, and that they, the parties of the first part, would execute such further assurances of the said land as might be requisite, which said deed is filed herewith as exhibit "C", and prayed to be taken and read as a part of this bill;

That J. A. Libby and Mary E. Libby, his wife, by their deed dated May 19th, 1913, and duly recorded in the Clerk's Office of your Honor's Court, reciting the conveyance last above mentioned, and further reciting that they desired

to further convey their interest in the said real estate, and to personally guarantee the title of the said real estate to your complainant, and to save your complainant, his heirs and assigns harmless of any damages which he might sustain by the assertion at any time of any right, title or interest in the said real estate by the said child or children of the said J. A. Libby or Mary E. Libby, did further convey and guarantee to your complainant a complete and perfect title to the said parcel of land, which said deed is filed herewith as exhibit "D", and prayed to be taken and read as a part of this bill;

Your complainant further alleges and avers that the said Allie K. Libby, the infant daughter of J. A. Libby, now deceased, and Mary E. Libby, claims to have an interest in the said land, as one of the children of the said J. A. Libby, which your complainant denies, because the said Allie K.Libby was born after the death of the testator, when the interests of the children of the said J. A. Libby had become vested in those living at the death of the testator. But should a construction of the said will by your Honor be that the said infant, Allie K. Libby, be entitled to an interest therein, the said land should be partitioned between your complainant and the said infant defendant;

Your complainant further states that the said real estate is, as he believes, susceptible of partition amongst the parties entitled thereto, but if it cannot be so divided, then your complainant desires that the same may be sold and the proceeds divided ~~amongst the adult~~ between Your Complainant The and infant defendant ~~parties~~, according to their respective rights, or that the entire land may be allotted to your complainant, who will accept it, and pay therefor to the infant, such sum of money

as her interest therein may entitle her to.

Your complainant further alleges and avers that by and under the terms and provisions of the deed from the said J. A. Libby and Mary E. Libby to your complainant, filed herewith as an exhibit, that the said Mary E. Libby, as grantor and guarantor under the terms of the said deed, is liable to your complainant for the value of the infant's share in said land, should the said infant have an interest therein;

For as much, therefore, as your complainant is remediless in the premises, save by the aid of a Court of Equity, he prays that Mary E. Libby and Allie K. Libby, be made parties defendant to this bill, and required to answer the same, answer under oath being waived, the adult in her own proper person, and the infant by her guardian ad litem; and that a proper guardian ad litem be appointed in this cause for the said infant, who shall also answer this bill; that proper process issue; that the will be construed, and if the infant has an interest therein, the said real estate be divided between the parties entitled thereto or else that it be sold, and the proceeds divided, or that the infant's share, should she have any interest therein, be allotted to your complainant, who will accept it, and pay therefor to the proper party, such sum of money as the interest of the infant therein may entitle her to; that the said Mary E. Libby be compelled and required to account to your complainant for the full value of the infant's share, should she have any, in such amount as he may pay therefor should the same be allotted to him; or if sold, that the said Mary E. Libby shall be required to refund to your complainant, an amount of money equal to that to which the infant would be entitled to from the proceeds of said sale; that all proper

orders and decrees may be made, accounts taken and inquiries be directed, and that such other, further and general relief as in the premises may be just and right. And your complainant will ever pray, &c.

J. F. Minton
By E. H. Williams, Solr
B.

Scott Massie
E. H. Williams S. C.
B.

3-1/2

J. F. MINTON,

VS) 745 Cy

MARY E. LIBBEY, ET AL.

ANSWER OF INFANT BY GUARDIAN
AD LITEM.

Filed Jany 4. 1917

ERNEST H. WILLIAMS
Attorney-at-Law
SMITHFIELD, VIRGINIA

able costs by her in this behalf expended.

J W Holloway Jr
Guardian ad litem for
Allie K. Libbey, respondent.

[redacted]
Counsel.

Allie K Libby
by J W Holloway Jr
Guardian ad litem.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

J. F. MINTON,

VS)

MARY E. LIBBY and ALLIE K. LIBBY,
an infant under fourteen.

The separate answer of Allie K. Libby, an infant under the age of twenty-one years, by T. D. Calloway Jr., her guardian ad litem, appointed to defend her in this suit, to a bill of complaint filed against her and Mary E. Libby, in the Circuit Court for the County of Isle of Wight, Virginia, by J. F. Minton, complainant.

This respondent reserving to herself the benefit of all just exceptions to the said bill of complaint, for answer thereto, or to so much thereof as he is advised that it is material he should answer, by his guardian ad litem, answers and says:

That she is an infant of tender years, and by reason of her infancy is incapable of understanding or taking care of her rights and interests herein; and that she therefore commends herself and her rights and interests to the protection of the Court, and prays that no decrees may be entered that will tend to her prejudice.

And, now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with her reason-

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Sam F. Mallon

vs Chancery 945

Mary E. Libby et al

3 Subpoena

VIRGINIA: CLERKS OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT

Filed 9/20 1916

Teste, [illegible] Clerk.

I executed the within summons this the 18th, day of September 1916, in the County of Isle of Wight, by serving a true copy of the same on Mary E. Libbey at her residence in said county.

R. Eug. Edwards

Sheriff of Isle of Wight County.

Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

We command you that you summon Mary E. Libby and Allie K. Libby, the last named being an infant, under the age of twenty one years, to appear at the Clerk's Office of our Circuit Court for the County of Isle of Wight, at the rules to be holden therefor on the Third Monday in September, 1916, to answer Jesse F. Minton a bill in chancery exhibited by him against them. And have then and there this writ.

Witness, A. S. Johnson, Clerk of said Court, at the Courthouse, this 15th. day of September, 1916.

Teste, A. S. Johnson Clerk.

E. H. Williams, p.q.

Minton et al

vs Chauncey V45

Libby et al

Memo

Feb 9 1916

Jesse F. Minton

vs) Chancery

Mary E. Libby and Allie K. Libby, the last named being an infant.

Issue summons for defendants to answer complainant a bill in chancery to be filed Second September Rules, 1916.

E. H. Williams, p.q.

To the Clerk of the Circuit
Court of the County of Isle
of Wight.

Appoint J. W. Holloway, Jr. guardian ad litem for the infant defendant, Allie K. Libby.

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J. F. Minter
vs } Cy 245
Mary E Libby et al

Report of Comr

Filed Oct 11, 19 1

A.S. JOHNSON
ISLE OF WIGHT C.H. VA.

and pay the other child for her share.

Q- What do you think is the present fee simple value of the property?

A- Seventy-five hundred or eight thousand dollars.

Q- What was the value of the property, in your opinion, at the time J.F.Minton purchased the shares of Charlie Libbey and Carrie Libbey?

A- Something like two thousand dollars less than the value I have just given.

Q- Has the value of the land increased, in addition to the buildings erected thereon since J.F.Minton purchased the land, by reason of his management thereof?

A- Yes, sir.

Q- To what extent?

A- I believe that it would produce one-fifth more now than it would at the time of his purchase, and, I would say that its value had increased some five or six hundred dollars.

And further, this deponent saith not.

W. R. Minton

M. R. Minton being duly sworn deposes as follows:

Q- Please state your name, age, residence and occupation.

A- My name is M. R. Minton, I am forty-five years of age, I live in Isle of Wight County, and am a farmer.

Q- Mr. Minton, are you acquainted with the land of which Margaret W. Libbey died seized and possessed?

A- Yes, sir, I reside within about a mile of the land in question, and have lived in that neighborhood all of my life.

Q- Do you know whether or not Jesse F. Minton, who is now in possession of the said property, has erected any improvments thereon, and if so, please state the value of same.

A- Yes, sir, he has, and my judgment is, that the improvments which he has put upon the place has increased its value between fifteen hundred and two thousand dollars.

Q- The will of Margaret W. Libbey, devises the place to J.A. Libbey for life, with remainder at his death to his children. Do you know his children?

A- Yes, sir, there were two children, Carrie and Charlie by his first wife, and one, Allie K. Libbey by the last wife. Charlie and Carrie are of age, and have been for some time; Allie is now an infant, some four or five years of age, as well as I can remember.

Q- Can partition of this farm be conveniently made between the children, in your opinion?

A- It could not be conveniently divided without materially reducing the value of the property. It is my opinion that the only convenient way to make proper division of it, would be to sell the land, and divide the proceeds.

Q- Do you know any party in interest who will take the entire property, and pay to the others in interest, or, other in interest, for their shares therein?

A- I understand that Jesse F. Minton has purchased the interest in the property of Carrie and Charlie, and, I fell quite sure that he would be willing to take the entire property

Q- Are you willing to take the entire property, at such price as the court shall determine to be its value, and pay to Allie K. Libbey, or to whomsoever the court may direct, such sum of money as may be found to be her share?

A- Yes, sir.

I would like to add that the property has never paid me the interest on the amount of money I paid for it, until last year, when I made as much as the interest upon my potato crop. The returns from the property, the entire time that I have been in possession of same, has not paid the interest and the taxes.

And further, this deponent saith not.

J. F. Winters

A- I purchased it for a home.

Q- What would you have been willing to pay for the entire property at the time, as a speculative proposition?

A- Not over $7500.00.

Q- Have you erected any improvements upon the land since you have owned it?

A- Yes, sir. The actual cost of the buildings that I have erected, and repairs to other buildings, has been $1825.00. I have, in addition to this, bought about $200.00 worth of wire fence, and erected thereon. I have taken under fence, about forty, or forty-five acres, that had not been in cultivation for years before I purchased the property, which did not rent for a thing, and which cost me a good deal more to work for three years, say, a hundred dollars or more, than I got out of it, in order to get it in a fair state of cultivation.

Q- What do you consider a fair fee simple value of the property as it now stands.

A- It stands me very near $10,000.00, or quite that much; but, would
I / not expect to be able to get that amount out of it, if I had to dispose of it at this time upon the open market; certainly not within fifteen hundred or two thousand dollars of that amount.

Q- When were you advised that the infant child, J.A.Libbey, had an interest in this place?

A- When I purchased the property, there was some question raised as to the interest of the infant child; but, J.A. Libbey and his wife, executed to me an instrument which left me under the impression from the advice of the attorney of the attorney who prepared the paper, that the interest of that child was eliminated, and, I thought I was getting a clear title to the property. I did not know of the conflict, until a short time prior to the institution of this suit, that I did not have a perfect title to the property.

J. F. Minton, being duly sworn, deposes and says:

Q- Please state your name, age, occupation and residence.

A- My name is Jesse F. Minton, I am thirty-four years of age; I am a farmer, and live in Isle of Wight County, upon the Libbey farm.

Q- You state that you reside upon the Libbey farm. Is this the farm that Margaret W. Libbey died seized and possessed, and which she gave to J.A.Libbey for life, and at his death to his children?

A- Yes, sir.

Q- Are you the present owner of the said farm?

A- I am, or thought I was. In the year, 1913, J.A.Libbey offered to sell me this piece of land for $8500.00, which I considered a very large price, but, I wanted the land, and accepted his offer. So far as I then knew, I was the fee simple owner of the land. It later developed that the land was his mother's; that she died leaving only one child, which was the said J.A.LIbbey, and that she made a will, which was kept off the record from the time of her death until after I purchased the land, never having been proved. In her will, she only gave to J.A.Libbey, a life estate, with remainder to his children. I was advised, and my impression was, that the two children by the first wife, namely, Charlie and Carrie Libbey, and the said J.A.Libbey, their father, had perfect right to make a complete conveyance of the entire property, and th at the child of J.A. LIbbey, by his last wife, had no interest therein. It has later developed that the child by his last wife, may have an interest, and, I have brought this suit for the purpose of learning whether or not that is true; and, if so, what interest the child now has in the land.

Q- When you purchased this property, did you purchase it for a home, or, for an investment.

sirable tenant. He has erected tenant houses thereon, and fixed up the out buildings, and fences. Without these he could not have had any one live upon the land to cultivate it, and, he would not have been able to have gotten the necessary labor.

Q- Are you acquainted with the children of J.A.Libbey?

A- Yes, sir, there were two children by his first wife, Charlie and Carrie, and one by the last wife, Allie K., who is in infant, I should say, five or six years of age.

Q- Is his last wife alive?

A- Yes, sir.

And, further, this deponent saith not.

J.E. Warren

would certainly be to his interest to do so.

Q- Since J. F. Minton has been in possession of theproperty, has he erected thereon, any improvements, and if so, please state, the best you can, the value of these improvements.

A- I am not particularly advised as to these improvements. I know that he has erected some improvements thereon, and in the best of my judgment, which is gained from casual observation of theproperty, would say that he has put improvements upon the farm, certainly to the extent of fifteen hundred dollars.

Q- Has his management of the farm, since he has been the occupant thereof, materially increased its value?

A- The land was in a very poor condition when he purchased it, and he has used a good deal of fertilizer thereon, which has, of course, brought results. I would say that the value of the land itself has been increased five hundred dollars since he has occupied it, by reason of his management and cultivation of same.

Q- What do you think the fee simple value of the property is?

A- J. A. Libbey offered it to me for $8500.00; and, I went to look at the property, and, after looking at same, very promptly decided that I would not give, certainly over $7500.00 for it.

Q- What would this property have rented for at the time he disposed of it to J.F.Minton?

A- I do not believe that he could have gotten over four hundred dollars a year for same.

Q- What would it rent for, now, per year?

A- Well, I would say that it would rent for $250.00 more now, than then, because of the improvements J.F.Minton has erected thereon, and by his management and cultivation of same. When he purchased the farm, theland and the out buildings were in a bad condition; and, in no condition to rent to a de-

J. E. Warren being duly sworn deposes and says:

Q- Please state your name, age, residence and occupation.

A- My name is J.E.Warren, I am fifty-one years of age, I reside in the town of Smithfield, and am a merchant and farmer.

Q- Mr. Warren, are you acquainted with the piece of property which Margaret W. Libbey owned at the time of her death, in this county, and which was occupied by J.A.Libbey up to the time of hisdeath, or, some time prior thereto?

A- Yes, sir, I am acquainted with the property; but, I understand J.A.Libbey, as well as his two children, C.A.Libbey and Carrie Libbey, disposed of their interest in the property some time prior to the death of J.A.Libbey, to J.F. Minton; and, my impression and understanding at the time that J.A.Libbey, C.A.Libbey and Carrie Libbey disposed of the property to J.F.Minton, that they disposed of the whole of the property, and no other person had any interest therein. This conclusion is drawn from th fact that J.A.Libbey offered to sell the property me before his death, and informed me that he had a perfect right to sell the property, and could give me a good title to it.

Q- Mr. Warren, do you think that this property can be conveniently divided among the three children of J.A.Libbey?

A- No, sir. More could be gotten out of, by selling same, and dividing the proceeds; it is not sufficient to make three farms, without materially reducing the value of the whole.

Q- Do you know of any party who has an interest in the land, who would be willing to take the whole of same, and pay to the others, for their shares?

A- My understanding was, and is, that J.F.Minton owns the entire place, but, if he does not, and there is any other interest outstanding, then, I fell quite sure that he would take the interest of the other party, and pay for it. I t

for any other purpose than to convey an inchoate dower interest therein.

It will be noted, from this last clause that J. F. Minton is the owner of the shares of C. A. Libby and Carrie Libby, and that Allie M. Libby is the owner of another share, subject, probably to the estate of said Mary E. Libby, created by the will of said Margaret W. Libby, she having joined in said conveyances, so far as she, most likely knew, for the sole purpose of conveying her inchoate dower interest in said land, if any, in the right therein of her husband, J. A. Libby.

Respectfully submitted,

Commissioner in Chancery.

Commissioner's fee, $25.00

"their interest in said real estate" and to "further to personally guarantee the title to the said real estate to the said J. F. Minton; and further to save the said J. F. Minton his heirs and assigns harmless of any damages which he might sustain by the assertion at any time, of any right, title or interest in the said real estate by the child or children of the said J. A. Libby and Mary E. Libby", and did, in said deed "covenant and agree with the said J. F. Minton, his heirs and assigns, that no child or children of theirs, or heirs or assigns of any child, or children of theirs, shall ever assert any right, title, claim, or interest of whatever kind or nature, in and to the above described property; and the said J. A. Libby and Mary E. Libby do hereby covenant that a lien shall hereby be created upon the property which is now owned by the said J. A. Libby and Mary E. Libby, or which shall, at any future time be owned by them, as well as any interest in and to any property which is now owned, or may be hereafter owned by them for the purpose of saving harmless the said J. F. Minton, his heirs or assigns, of any damage or damages of whatever kind which may be sustained by the assertion of any right, title, claim, or interest in and to the above described property, by any child, or children of the said J. A. Libby and Mary E. Libby, or their heirs or assigns, or any child or children of the said J. A. Libby and Mary E. Libby."

It will be noted that Mary E. Libby always signed the deeds above mentioned only as wife of said J. A. Libby, and not as conveying any property in her own right. It may be proper that of the Court shall direct a conveyance in the land herein mentioned to J. F. Minton, that it also direct that the said Mary E. Libby shall join therein, for the purpose of being certain to convey her interest in said land, derived through the will of said Margaret W. Libby. As the deeds of conveyance are written without personal knowledge of the contents of the will, it would not appear to the recording officer that it was necessary to index the name of said Mary E. Libby, as being a party to said deeds

and Local Board of Review, indicating that the value of the property, in 1915, when the assessment was made, was $6000, the assesment being based upon a sixty per cent ad valorem basis. The land, at the present time, is worth, probably nine to ten thousand dollars.

6. The land herein mentioned was devised to J. A. Libby, by his mother, Margaret A. Libby, "for life, with remainder at my son's death to his children, and in the event that at the death of my son, any child or children should be dead, leaving a child or children, such child or children shall take their deceased parent's share, perstirpes; should my said son leave a widow, it is my will and desire that she should have a life estate in one third of the real estate hereby devised, and at her death, to pass to my son's children, and child or children of any deceased child or children, per stirpes, as in this item above mentioned".

7. The said J. A. Libby left him surviving an adult son and daughter, by his first wife, namely, C. A. Libby and Carrie Libby, and an infant child, Allie K. Libby, by his last wife.

The two adult children, by their deed dated May 12th. 1 15, and of record in Deed Book 81, page 411, conveyed their interest in said land to said J. F. Minton, as well as said J. A. Libby and Mary E. Libby,"his wife".

The said J. A. Libby and Mary E. Libby, <u>his wife</u>, by their deed bearing date 19th. May, 1913, and of record in Deed Book No. 81, page 428, again conveyed their interest in said land to said J. F. Minton, and attempted, therein, to create a lien upon their other property, to indemnify said J. F. Minton from any loss he might sustain by reason of any action the said infant child, Allie K. Libby, or any other child of them, the said J. A. Libby and Mary E. Libby, which said deed recites, in substance, that in addition to the former conveyance mentioned, to said J. F. Minton, from C. A. Libby, Carrie Libby, and said J. A. Libby, his wife, they wish to further convey to said J. F. Minton

of relea e would be, immediately, prepared, and entered of record, to clear this lien.

Your Commissioner finds two more deed of trust liens against this property, to-wit:

a. A deed of trust, bearing date May 13th. 1913, entered of record in Deed Book No. 82, page 148, in which said J. F. Minton, then an unmarried man, conveyed the said land to Geo. F. Whitley, trustee for Bank of Smithfield, securing the payment of the sum of $2000.00, evidenced by a negotiable promissory note, of even date with said deed, payable ninety days after date.

b. A deed of trust from said J. F. Minton, and his wife, to John I. Cofer, trustee, securing to Bank of Smithfield the payment of the sum of $9000.00, evidenced by a negotiable promissory note, of even date with said deed of trust (July 24th. 1917), which said deed of trust is entered of record in Deed Book No. 86, page 506.

3. The land in the bill mentioned is not susceptible of convenient partition among the parties entitled to share therein.

It is in evidence that the entire subject will be taken by said J. F. Minton, and the said Allie K. Libby, the infant defendant paid, by said J. F. Minton, the price of her share therein.

4. All of the parties necessary are before the Court.

5. The annual value of said land is probably, at this time, six hundred or six hundred and fifty dollars; but at the time it was purchased by J. F. Minton, not over the sum of five hundred dollars.

The fee simple value, at the time it was purchased by J. F. Minton, was, probably seven thousand dollars, ranging from five hundred less than this amount to the same amount over. It was then assessed at $3000, and is now assessed at $3600, indicating, according to the assessment placed upon it by the Land Assessor

VIRGINIA: CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

Minton

vs) Chancery. 245.

Libby et als.

TO HONORABLE R. D. WHITE, JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

The undersigned, one of the Commissioners in Chancery of your Honor's Court, respectfully reports to the Court that the papers in the above entitled cause, now pending in said court, being referred to him for the execution of a decree entered there in, on the 4th. day of January, has taken the evidence of J. E. Warren and others, the same having been reduced to writing and is filed herewith as a part of this report, at which all of the parties in interest and their counsel were present, and from such evidence, and from the records filed in the Clerk's Office of said court, is informed and reports as follows:

1. That J. F. Minton has put improvements upon the land in the bill and proceedings mentioned to the extent of something over two thousand dollars.

2. Your Commissioner finds a deed of trust, unreleased, against this piece of land, conveyed to F.R. Berryman, trustee, to secure to F. D. Gwaltney the payment of the sum of $1000.00, evidenced by a note payable ninety days after date, dated Feby. 1st. 1907, and another note, for the sum of $130.42, payable on demand, of the same date. This deed of trust bears date the 1st. day of February, 1907, and is entered of record in Deed Book No. 74, page 149.

Your Commissioner has talked to Mr. Gwaltney, the beneficiary under this deed of trust, and is informed that the debts secured thereby have been paid, and that he thought the deed had been released. He further informed your Commissioner that a deed

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Minton

v. { Cy. No 245

Libby et al

Special Comr's report

Filed May 15. 1911

execute a new Bond, in a penalty of not less than $_____, which will be sufficient to cover his entire responsibility, after which the sum, collected as aforesaid, by said Special Commissioner, be directed to be turned over to said guardian.

Respectfully submitted.

J. A. Thomas

Special Commissioner.

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

MINTON ET AL

VS) CHANCERY. NO. 245.

LIBBY ET ALS.

TO HONORABLE B. D. WHITE,

JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

The undersigned, Special Commissioner, appointed in this cause, by decree entered therein, on the 7th. day of April, 1919, respectfully reports as follows: that on the 7th. day of April, 1919, he executed the Bond required of him, by the decree, and that he had assigned to him, as directed by said decree, the Note given to The Merchants & Farmers Bank, Inc., of Smithfield, Va., by Mary E. Libby, as set forth in the said decree of April 7th., 1919, which note bears date November 23rd., 1917, and is for the principal sum of $3283.34, negotiable and payable at said bank, thirty days after date, with interest from date: that on the first day of March, 1921, + he collected the face of said Note. He has collected interest on said Note, as follows:

Nov. 1, 1919 $131.32 (7131.32)

May 1. 1920 $98.50

Nov. 1. 1921. $164.20

That on the 12th. day of March, 1919, J. A. Thomas, was duly appointed and qualified as Guardian of Allie Kae Libby, to whom the amount evidenced by the Note above, principal and interest, and collected as aforesaid, belonged, and executed a Bond in the penalty of $1500.00 that the said Special Commissioner is advised that the said fund, evidenced by the Note aforesaid, principal and interest can be paid to the guardian of the said Allie Kae Libby, and this Suit dismissed. He therefore, recommends to the Court that the said Guardian be required to

Form No. 312

CERTIFICATE OF CLERK OF QUALIFICATION

OF

.....

.....

as .....

of .....

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 312.

Virginia: In the Clerk's Office of the Circuit Court of the County of

Isle Of Wight.

I, R. A. Edwards, Clerk of the Circuit Court of the County of Isle Of Wight, do hereby certify that on the 12th day of March, 1919, J. A. Thomas, duly qualified in this said Court as Guardian of Allie Kae Libby,

and gave bond as such, according to law. and has now this day renewed and increased said bond as peran order entered by the Circuit Court of said County on 5/25/21

Given under my hand, this 25 day of May, 1921.

R. A. Edwards, Clerk.

12

Minton

v. [illegible] Bamcorp. No

Libby et al

Spl Comr's report

Filed July 5th 1951

A.S. JOHNSON
ATTORNEY AT LAW
ISLE OF WIGHT C.H., VA.

Received of J. A. Thomas the sum of $3667.21, it being the amount held by him as Special Commissioner in the suit of Minton vs. Libby et al., in the Circuit Court of the County of Isle of Wight pending, docket No. 245., and directed to be paid to me by decree entered in said suit as of the 25th. day of May, 1921.

J. A. Thomas

Guardian of Allie Kae Libby.

VIRGINIA: CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

Minton

vs) Chancery. No. 245.

Libby et al.

TO HONORABLE B. D. WHITE,

JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

The undersigned, Special Commissioner, pursuant to the decretal order entered in this cause, on the 25th. day of May, 1921, has paid to J. A. Thomas, guardian for Allie Kae Libby, the sum of $3667.21, the amount of the bond, and the interest thereon collected by him, mentioned in the said decree, less the unpaid costs of this suit, chargeable to him as Special Commissioner, up to and including final decree, the said J. A. Thomas, as such guardian, having executed the bond required of him by the said decree of May 25th. 1921, in the penalty of $6000.00, a copy of which is hereto attached.

So far as your commissioner is informed and believes he has done all that is proper for him to do in this proceeding, and it should now be dismissed.

Respectfully submitted,

J. A. Thomas

Special Commissioner.

Received of J. A. Thomas, Special Commissioner, the sum of $12.40, it being costs in ths suit of Minton vs. Libby et al, Docket No. 245.

July 5th. 1921. R. A. Edmunds, Clerk.

No.

Know all Men by These Presents: That we J. A. Thomas

principal ,

and

Fidelity and Deposit Company, of Maryland surety ,

are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of six thousand Dollars to the payment whereof well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

And as to this bond we hereby severally waive the benefit of our Homestead Exemption, and also any right, claim or privilege to discharge any liability arising hereunder to the said Commonwealth, or by virtue of the said office or trust for which this bond is given, with coupons detached from the bonds of this State.

IN TESTIMONY WHEREOF, the said J. A. Thomas principal ,

has hereto set his hand and affixed his seal;

and the said Fidelity and Deposit Company of Maryland surety ,

by George S. Guy , its duly authorized

agent and attorney in fact, has caused its corporate name and seal to be hereunto affixed, the said seal to be attested

by the signature of the said George S. Guy , its said agent and attorney

in fact, this, the 25th day of May A. D. 1921

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bound J. A. Thomas, who has heretofore, on the 12th day of March. 1919, been appointed, and then duly qualified as guardian of Allie Kae Libby, and has beenrequired to execute another bond with higher penalty,

shall faithfully discharge the duties of his office or trust as such guardian

, then the above obligation to be void, or else to remain in full force and virtue.

J.A.Thomas [SEAL]

Fidelity and Deposit Company of Maryland

By George S. Guy

Its duly authorized agent and attorney in fact.

Attest: George S. Guy

Agent and attorney in fact.

Virginia: In the ~~Clerk's Office of the~~ Circuit Court of the County of Isle of Wight the 25th day of May 1921 this bond was duly executed and acknowledged by the obligors to the same and ordered to be recorded.

R.A.Edwards Clerk.

A copy
Teste; R. A. Edwards. clerk.

4

J. F. Brinton

vs

Mary E. Libby et ux

Deed

1917
Jan. 4.
Enter Lis
B. W.

O.O.B. 7 p 398

Lett & Massie,
Attorneys-at-Law,
Newport News, Va.

FRANKLIN PRINTING COMPANY, NEWPORT NEWS, VA

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

J. F. Minton,

vs,

Mary E. Libby and Allie K. Libby,
an infant under fourteen.

This cause, which has matured at rules, came on this day to be heard upon the bill of complaint filed herein with the exhibits, taken for confessed as to the adult defendant, Mary E. Libby, upon whom process was duly served, and upon the answer of the infant defendant, Allie K. Libby, by her guardian ad litem, and the answer of the guardian ad litem, (who has been duly appointed as such at rules) duly filed herein, and was argued by counsel.

And it appearing to the Court, from the bill that Margaret W. Libby, by her will duly probated May 13th, 1913, devised and bequeathed to her husband, Alexander Libby, for life, a certain tract of land containing by estimate two hundred and fifty-seven (257) acres, bounded by the land of E. K. Batten, Sue A. Minton, Allen Johnson, the land belonging to the estate of Mills R. Minton, and what is known as West Mill Creek, and after his death, to her son, J. A. Libby, for and during his life, with remainder at the death of the said J. A. Libby, to his children;

And it further appearing to the Court from said bill that Alexander Libby and J. A. Libby, both survived the testator, and departed this life before the institution of this suit, the said J. A. Libby leaving surviving him three children, G. A. Libby, Carrie G. Libby and Allie K. Libby;

that C. A. Libby and Carrie G. Libby were born during the lifetime of the testatrix, and that Allie K. Libby was born after the death of the testatrix; and is a minor and that said children were all the children of said J. A. Libby.

And it further appearing to the Court that under the terms and provisions of the said will, that it was the intent of the testatrix that all of the children of J. A. Libby, living at his death, should take an undivided interest in said land, it is therefore adjudged, ordered and decreed that the said C. A. Libby, Carrie G. Libby and Allie K. Libby, being all of ~~the~~ children of J. A. Libby, who take each a one-third undivided interest in the said farm; said farm being the only land which said ~~Allie~~ has by virtue of said will.

And it further appearing to the Court that the said C. A. Libby and Carrie G. Libby have by their deeds duly recorded in the Clerk's Office of this Court, conveyed ~~therein~~ their interest in the said land to the said J. F. Minton, it is ~~further~~ adjudged, ordered and decreed that this cause be referred to one of the Commissioners in Chancery of this Court, to ascertain ~~whether or not the said land is subject to partition and divisible in kind~~ and report.

Whether J. F. Minton has erected any improvements thereon, and if so, the value of thesame;

~~To take~~ an account of any liens against the interest of the parties in said land ~~of Allie K. Libby~~;

Whether partition can be conveniently made, and if not, whether the entire subject matter may be allotted to any party who will accept it, and pay therefor to the other, such sum of money as ~~his or her~~ their interest therein may entitle them to, or if the interest of those entitled to the proceeds thereof, will be promoted by a sale of the

entire subject matter, or allotment of part and sale of the residue. Whether all the lands and necessary

And report all such other matters as counsel may request or the Court direct.

And the Court doth reserve, &c.

the Court in the case of [illegible] in fee simple, [illegible] with full power [illegible] the said lands subject [illegible] and lands [illegible]

Ellinton

v 245

Lilley et als

Decree

1919
Nov. 5.
Enter this.
B.D.W.

V

C. C. B. 7
Page 435

Lett & Massie,
Attorneys-at-Law,
Newport News, Va.

FRANKLIN PRINTING COMPANY, NEWPORT NEWS, VA

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

J. F. Minton,

vs.

Mary E. Libby and Allie K. Libby, an infant.

This cause, in which process was duly served and regularly matured at rules, came on to be heard upon the bill filed herein, (taken for confessed as to the adult defendant, Mary E. Libby), and upon the answer of the infant defendant under fourteen years of age, by her guardian ad litem, and upon the answer of the guardian ad litem, filed herein, and the replications thereto, and upon the report of the Commissioner in Chancery filed October 11th, 1917, to which no exceptions have been filed, and the evidence returned with said report, and was argued by counsel.

Upon consideration whereof, it appearing to the Court from the report of said Commissioner, which is hereby confirmed, that the proper parties are duly and properly before the Court, and that the whole of that certain parcel of land, containing two hundred and fifty-seven acres, bounded by the lands of E. K. Batten, Sue A. Minton, Allen Johnson, the lands belonging to the estate of Mills R. Minton, and what is known as West Mill Creek, in the said bill of complaint described, and upon which the plaintiff now resides, was sold and conveyed to him upon the representation and understanding that the

grantors in said deed were the sole owners thereof, and that such deed conveyed the fee simple to the entire tract; and that subsequently the will of Margaret W. Libby, dated in 1887, who died in 1900, was probated, and from said report, and under a proper construction of said will, the grantors in said deed were not the sole owners of said parcel of land, but that under the terms and provisions of the said will, the children of J. A. Libby living at the death of Margaret W. Libby, were not the sole owners of said tract of land, but that Allie K. Libby, the infant daughter of J. A. Libby, born after the death of ~~Mary~~ Margaret W. Libby, likewise has an interest in said land, being a one-third undivided interest therein, and that the plaintiff herein acquired under his deed only an undivided two-thirds interest in said parcel of land, and under the belief and understanding that he is the sole owner thereof, made extensive improvements thereon, and has used and cultivated the entire tract, the fair annual rental value of which is Four hundred and fifty dollars ($450.00); he having already paid all taxes and insurance thereon

It further appearing to the Court from said report, that the said plaintiff paid for said property, the sum of Eighty-five hundred dollars ($8500.00), and after improvements made thereon by the plaintiff, it is now worth the sum of Ten thousand dollars ($10,000.00), and that partition of the said parcel of land cannot be conveniently made, and it is not susceptible of convenient partition amongst the

parties entitled to share therein, but that the said J. F. Minton, the plaintiff herein, is willing to accept the entire subject or parcel of land, and pay therefore to the other party such sum of money as her interest therein may entitle her to;

It is therefore adjudged, ordered and decreed that under the terms and provisions of the said will of Margaret W. Libby, that the said Allie K. Libby, the infant defendant herein, and daughter of J. A. Libby, deceased, is the fee simple owner of an undivided one-third interest in said tract of land, and as such, entitled to one-third of its rental value during the time held by the said J. F. Minton, and that the said J. F. Minton, under his said purchase, is the owner in fee simple of only a two-third undivided interest in and to said farm and ~~also~~ all the improvements made thereon, and that the entire subject or farm above described, and as set out in the bill and proceedings, be and the same is hereby allotted to the said J. F. Minton, who is hereby directed to deposit to the credit of this cause, in the ~~Bank of~~ Merchants & Farmers ~~Smithfield~~ Bank of Smithfield, the sum of Thirty two hundred and eight three and 34/100 dollars, being one-third of the value of the said farm, to wit $2833.34/100, after deducting the improvements made thereon by the said Minton, and one-third of the fair rental value thereof during the time he has held the same, to wit $450.00 said amount being in full of the interest of the said infant, Allie K. Libby, therein, and file with the papers in this cause, a certificate showing said deposit; and when said deposit has been so made, E. H. Williams, who is hereby appointed Special Commissioner for that purpose, is authorized and directed

to make, execute and deliver to the said J. F. Minton, a good and sufficient deed, with covenants of special warranty, for the undivided interest of the said infant in said tract of land;

It further appearing to the Court that at the time of the deed/ing of the said property to the said Mintog, the said Mary E. Libby executed, and had recorded, an instrument guaranteeing to the said Minton, a full and complete title to the whole of the said tract, and to save the said Minton harmless from any damage or loss which he might sustain by the assertion at any time of any right, title or interest by any child of the said J. A. Libby;

It is therefore adjudged, ordered and decreed that the said Mary E. Libby, the mother of the infant defendant, Allie K. Libby, do pay to the said J. F. Minton, the sum of Three two hundred and Eight two & 3⅓/100 Dollars, with interest thereon from this date, being the amount paid by him for the interest of the said infant in said tract of land, and her part of the fair rental value thereof.

And the Court doth reserve &c.

7

J.F.MINTON,

VS) IN CHANCERY, 248

MARY E. LIBBEY, ET AL.

1917

Dec. 18

E. E. Ins.

B. L. W.

V

C. C. 3. # 7

page 440

ERNEST H. WILLIAMS
Attorney-at-Law
SMITHFIELD, VIRGINIA

and was argued by counsel.

On consideration whereof, the Court doth adjudge, order and decree that the said sum of $3283.34, shall be invested in notes or bonds, secured by a deed of trust on real estate, and to that end the Clerk of this Court is hereby ordered and directed to purchase from The Merchants and Farmers Bank, Inc., the note or bond which is held against the said Mary E.Libbey, for the sum of $3283.34 and secured by a deed of trust on the house of the said Mary E. Libbey, as aforesaid.

And the Court doth further adjudge, order and decree that the Clerk of this Court shall draw his check for the said sum of $3283.34, payable to The Merchants and Farmers Bank, Incorporated, of Smithfield, Virginia, which said check shall be in full payment for the note or bond the said bank holds against the said Mary E. Libbey, and secured as aforesaid, and an attested copy of this paragraph of this decree shall be attached to the said check of the said Clerk upon the said bank, and the same is the order of this Court, and shall be the receipt of the bank for the payment of the check of the Clerk of this Court, payable, as aforesaid, for the purpose as aforesaid.

And it is further adjudged, ordered and decreed that the said note or bond of the said Mary E. Libbey for the sum of $3283.34, payable and secured as aforesaid, shall be assigned to this suit, and remain in the custody of the Clerk of this Court until the further order of this Court.

And this cause is continued.

_____, JUDGE.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

J.F.MINTON,.....PLAINTIFF,

VS) IN CHANCERY,

MARY E. LIBBEY AND ALLIE K. LIBBEY, AN INFANT,.....DEFENDANTS.

This cause came on this day to be again heard upon the papers formerly read, and on the statement of E.H.Williams, Special Commissioner, that he had executed and delivered to the said J.F.Minton, a deed for the interest of the said infant defendant, Allie K. Libbey, in and to the land in the bill and proceedings of this cause mentioned and described, the said J. F. Minton, having first, in pursuance of the decree entered November 5th, 1917, deposited in The Merchants and Farmers Bank, Incorporated, of the Town of Smithfield, Virginia, to the credit of this suit, the sum of $3283.34, a credit memorandum of the said sum being herewith filed with the papers in this cause; and, upon the statement of Counsel for plaintiff, that the said Mary E. Libbey, in pursuance of the said decretal order of November 5th, 1917, had fully paid to the said J. F. Minton, the sum of $3283.34, as directed by the aforesaid decree; and upon the further statement of Counsel that the said Mary E. Libbey, in order to pay to the said J. F. Minton, the said sum of $3283.34, borrowed the said sum from The Merchants and Farmers Bank, Inc., Smithfield, Virginia, and secured the said loan by a deed of trust on her house and lot in the Town of Smithfield, said house and lot being of the fee simple value of from $4000.00 to $5000.00;

8

J. F. Minton
vs
Mary Edelbrock

Decree.

1919
Apr. 7.
Entered this.
B. D. W.

C. o. B. 7.
page 497.

following words, to-wit: "This note is assigned to J. A. Thomas, Special Commissioner in the suit of Minton vs. Libby et al, pending in the Circuit Court of the County of Isle of Wight, as directed by a decretal order entered by said Court, in said cause, on the 7th. day of April, 1918, without recourse" and cause the said endorsement to be signed by its proper officer.

And this cause is continued.

daughter, Alese Squire, who is yet an infant; and, it appearing that the property conveyed in the said deed of trust is sufficient security for the payment of the debt, evidenced by the note aforesaid: the Court doth adjudge, order and decree that J. A. Thomas be, and he is, hereby, appointed a Special Commissioner for that purpose, and to whom the said note shall be assigned, ~~and~~ who shall hold the same, as such Special Commissioner, for the benefit of said Allie K. Libby, the infant defendant herein, and who shall collect the interest accruing thereon, and apply the same to the education, maintenance, and support of the said Allie K. Libby, under the direction of this Court.

The said Special Commissioner, who appears to be the guardian of said Alese Squire, shall keep the improvements upon the said property constantly insured, in some solvent Insurance Company, for not less than $3000.00, the policy of Insurance to be assigned to the trustee, in said deed of trust, ~~or to the Special Commissioner~~, in this cause, as the interest of the same may appear.

But said Special Commissioner shall do no act under this decree until he shall have, before the Clerk of this Court, executed a bond, payable and conditioned as the law directs, and with surety deemed sufficient by said Clerk, in the penalty of $4000.00.

And the said Special Commissioner shall make report to the Court, of his transactions under this decree, at the next regular term of this Court.

And the said The Merchants and Farmers Bank, Incorporated, upon presentation to it, of a copy of this decree, shall assign the said note to said Special Commissioner, without recourse to it, by endorsing upon the back thereof in the

VIRGINIA: CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

J. F. Minton,

vs) 245

Mary E. Libby, and Allie K. Libby, an infant

This cause came on this day to be again heard upon the papers formerly read, from a statement made at bar, and it appearing to the Court that the Clerk of this Court has not drawn his check for the sum of $3283.34, payable to The Merchants and Farmers Bank, Incorporated, of Smithfield, Virginia, which was intended to be in full payment of the note, given to said Bank, by Mary E. Libby, which note bears date 23rd. of November, 1917, ~~is~~ Said for the sum of $3283.34, and negotiable and payable, at said Bank, thirty days after date, with interest from date, as is directed in a decree entered herein on the 18th. day of December, 1917; and, it appearing that the said Mary E. Libby did not, in fact, obtain the said amount from said Bank, but that she, or her estate, is, in fact, indebted to the infant defendant, Allie K. Libby in the said sum of $3283.34, with interest thereon from November 5th., 1917, till paid; and, it appearing that the said note is ~~in safe keeping~~ in the said The Merchants and Farmers Bank, Incorporated, of Smithfield, Virginia; and, that since the entry of the said decree of December 18th., 1917, the said Mary E. Libby has departed this life, and by her last will and testament, which was duly admitted to probate in the Circuit Court Clerk's Office, of the County of Isle of Wight, and State of Virginia, devised the property conveyed in the deed of trust to secure the said The Merchants and Farmers Bank, Incorporated, to her

~11~

Minton

vs. Cy. No 4245

Libby et ux

Note for decree

To be entered May 25. 1911

/ J.W.C.

Book 8. Page 67.

EXAMINED AND VERIFIED

taken therefor, and filed with the report of his doings hereunder. But no payment shall be made to the said guardian, by the said Special Commissioner until he shall have executed a new Bond, as such guardian, in the penalty of ~~$5000.00~~ 6000.00, payable and conditioned as the law directs, a certificate of the execution thereof made by the Clerk of this Court, or an attested copy of said bond, to be filed with the papers in this cause.

And the said Special Commissioner shall make report to the Court of his doings hereunder, on or before the next term of this court.

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

MINTON ET AL

VS) CHANCERY NO. 245.

LIBBY ET ALS.

This cause came on this day to be again heard upon the papers formerly read, and upon the report of J. A. Thomas, Special Commissioner, this day, by leave of court, filed, and to which there is no exception, and was argued by counsel; and it appearing from said report that the said Special Commissioner, on the 7th. day of April, 1919, executed the bond required of him, by the decree entered on that date; that the note of Mary E. Libby, for the sum of $3283.34, bearing date November 23, 1917, payable to The Merchants and Farmers Bank, Inc., Smithfield, Virginia, has been assigned to the said Special Commissioner as directed in the said decree of April 7, 1919; that said Special Commissioner on the first day of November, 1919, collected $131.32, accrued interest on said note; and on May 1, 1920, collected $98.50, interest on said note; and on the first day of March, 1921, collected $164.20 interest on said note, and the principal amount of $3283.34; that the amount of principal and interest aforesaid, agregates $3677.36, which is now in the hands of said Special Commissioner; that the said sum of money, principal and interest, is a personal asset of the infant defendant, Allie Kae Libby; and that the said J. A. Thomas, on the 12th. day of March, 1919, was appointed, and duly qualified, in the Circuit Court of the County of Isle of Wight, as guardian of the said Allie Kae Libby, as appears of record, having executed a bond in the penalty of $1500.00: it is adjudged, ordered, and decreed that the said sum of $3283.34, the principal of the note aforesaid, paid to the said Special Commissioner, less the unpaid costs of this suit to dismissal, together with all accrued interest thereon, be paid to the said J. A. Thomas, guardian of the said Allie Kae Libby, as aforesaid, his receipt

Minton

vs) Chancery. No. 245.

Libby et al.

Note for final decree.

To be entered July 5th. 1921.

P.D.C.

C.O.B.8, page 75

Costs to dismissal paid,

_____Clk.

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

Minton
vs) Chancery. No. 245.
Libby et al..

This cause came on this day to be again hear upon the papers formerly read, and upon the report of J. A. Thomas, Special Commissioner, this day, by leave of court, filed, and to which there is no exception, and was argued by counsel:

On consideration whereof, and it appearing from the said report that the said J. A. Thomas, Special Commissioner, has, in obedience to the decree entered herein on the 25th. day of May, 1921, paid over to the guardian of Allie Kae Libby, the said guardian having executed the bond required of him by said decree, a copy being filed with the report of the said Special Commissioner, herein referred to, the sum of $3667.21, it being the amount of the bond mentioned in said decree of May 25th. 1921, and the interest collected thereupon, less the unpaid costs of this suit to dismissal, which costs amount to the $12.40, it is adjudged, ordered and decreed that the said report be, and is, hereby, confirmed.

And it further appearing to the Court that nothing further remains to be done in this cause it is ordered, adjudged and decreed that the same be stricken from the docket.

3-a

Exhibit "A"

Hinton
v
Kelly et ux

#5

In testimony whereof to this my last will and testament, I have hereunto set my hand and affixed my seal, this 22nd day of January, 1887.

Margaret W. Libby, (SEAL)

Signed, sealed, published and declared by the testatrix, Margaret W. Libby, as and for her last will and testament, in the presence of us, who in her presence and at her request and in the presence of one another, have hereunto subscribed our names, as witnesses thereto.

H. R. Parker,

N. L. Hart.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight, May 13th. 1913. A paper writing purporting to be the last will and testament of Margaret W. Libby, deceased, was this day presented for probate, and proved in part by the oath of N. L. Hart, one of the subscribing witnesses thereto, and H. R. Parker, the other subscribing witness, being dead, and E. W. Parker, having been duly sworn and deposed that he is well acquainted with the hand writing of the said H. R. Parker, and verily believes that the same thereto subscribed is the genuine signature of the said H. R. Parker, it is ordered that the said paper writing be recorded as the true last will and testament of the said Margaret W. Libby, deceased.

A. S. Johnson, Clerk.

A copy,

Teste: A S Johnson Clerk.

92 Va 534

Entered record under Schenk, also Court of Equity Subject to dower of after born children

Margaret W. Libby's Will.

In the name of God, amen. I, Margaret W. Libby, being of sound an and disposing mind and memory, do make and ordain this to be my last will and testament, in manner and form, as follows:

Item first, I give, devise, and bequeath to my beloved husband, Alexander Libby for life, all of my estate, real and personal of every kind and nature and description, whatsoever.

Item second, At the death of my said husband, Alexander Libby, I give, devise and bequeath, the estate, real and personal, heretofore given him for life, to my son, J. A. Libby, for life, with remainder at my son's death to his children, and in the event that at the death of my son, any child or children should be dead, leaving a child or children, such child or children, shall take their deceased parent's share, per stirpes; should my said son, leave a widow, it is my will and desire that she should have a life estate in one third of the real estate, hereby devised, and at her death, to pass to my son's children, and child, or children of any deceased child or children, per stirpes, as in this item above mentioned.

Item third, In the event that my said son, J. A. Libby should die without leaving a child or children or descendants of any child or children, then it is my wish and desire, that my said property real and personal, should be divided in two equal parts, one of said equal parts, I devise and bequeath to my right heirs. The others of said equal parts I devise and bequeath to the right heirs of my said husband, Alexander Libby.

Item fourth, I nominate and appoint my husband, Alexander Libby, to be the executor of this my last will and testament, and request that he be allowed ___ qualify as such executor without security.

3-B Exhibit "B"

Cy No 745 Munson

F. ... Tilley, et als, v. /

vs

TO) POWER OF ATTORNEY:

Geo. F.Whitley, Atty. in fact

Virginia: Clerk's Office of the Circuit Court o
the County of Isle of Wight

May 13 1913

Recorded in D B No 81 page 409

State Tax, - - - $.....

Clerk, - - - - $....1.30..

Comr. Revenue, - - $.....

Total, - - $.....

Teste.....Clerk

EXAMINED AND VERIFIED

GEORGE F. WHITLEY
ATTORNEY-AT-LAW
SMITHFIELD, VA.

acknowledged the same before me in my County aforesaid.

Given under my hand this 29th day of March, 1913.

W. L. Foy Notary Public.

STATE OF VIRGINIA,

County of Nottoway, to-wit:

I, Claude M Jones, a Notary Public in and for the County aforesaid, State of Virginia, whose commission expires on the 21st day of February, 1914, do certify that C. L. Libby and Della Libby his wife, whose names are signed to the writing hereunto annexed, bearing date on the 7th day of January, 1913, have acknowledged the same before me in my County aforesaid.

Given under my hand this 19th day of February, 1913

Claude M. Jones. Notary Public.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight May 13th. 1913 at three thirty o'clock P:M. this Power of Attorney ~~deed~~ was received and with the certificates annexed, admitted to record.

Teste, A. Johnson Clerk.

could do is acting personally. And we hereby ratify and confirm all lawful actions done by our said Attorney by virtue hereof.

Witness the following signatures and seals this 9th day of January, 1913:

J A Libby (Seal)

Mary E. Libby (Seal)

C. A. Libby (Seal)

Della Libby (Seal)

Carrie G. Libby (Seal)

STATE OF VERGINIA,

County of Isle of Wight, to-wit:

I, I. E. Peluan, a Notary Public in and for the County aforesaid, State of Virginia, whose comission expires on the 14th day of January, 1917, do certify that J. A. Libby and Mary E. Libby, whose names are signed to the writing hereunto annexed, bearing date on the 9th day of January, 1913, have acknowledged the same before me in my County aforesaid.

Given under my hand this 5th day of February, 1913.

I. E. Peluan Notary Public.

STATE OF Virginia,

County of Hanover, to-wit:

I, W. L. Froy, a Notary Public in and for the County aforesaid, State of Virginia, whose commission expires on the 15th day of april, 1916, do certify that Carrie G. Libby, whose name is signed to the writing hereunto annexed, bearing date on the 9th day of January, 1913, has

KNOW ALL MEN BY THESE PRESENTS, that we, J. A. Libby and Mary E. Libby, his wife, of the Town of Smithfield, State of Virginia, Carrie L. Libby, of the Town of Smithfield, State of Virginia, and C. A. Libby and Della Libby, his wife, of the Town of Crewe, State of Virginia, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint George F. Whitley, of the Town of Smithfield, Virginia, our true and lawful attorney, for us and in our name, place, and stead to bargain, sell, grant, and convey to such person or persons and for such sum or sums of money, or other consideration or considerations, as our said attorney shall deem most for our advantage and profit, all of our right, title and interest in and to that certain tract or parcel of land situate, lying and being in the County of Isle of Wight, State of Virginia, containing by estimation TWO HUNDRED AND FIFTY SEVEN (257) ACRES, sale and conveyance to be made in gross and not by the acre, bounded and described as follows: By the lands of E. K. Batten, Sue A. Minton, Allan Johnson, the lands belonging to the estate of Mills R. Minton, and what is known as "West Mill Creek"

The said tract, piece or parcel of land being the same tract, piece or parcel of land of which Margaret W. Libby died seized and possessed; to make all necessary deeds and conveyances thereof, with such covenants, warranties and assurances as to our said attorney shall seem expedient; to sign, seal, acknowledge, and deliver the same; to accept and receive the sum or sums of money, or other consideration or considerations which shall be coming to us on account of said sale; and to do, execute, and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises, as fully, largely, and amply to all intents and purposes as we ourselves might or

3-C. Exhibit "C"

J. A. Libby, et als, Minutes
by George F. Whitley,
Attorney in Fact.

vs

Cap Towers. Libel

To) Libel of Sailing and Sale:

J. F. Minton.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight

May 13 1913

Recorded in D. B. No. [illegible] page 411

State Tax,	$ 8.50
Clerk,	$ 2.00
Comr. Revenue,	$ 1.00
Total	$ 11.50

Teste, A. Johnson Clerk

EXAMINED AND VERIFIED

GEORGE F. WHITLEY
ATTORNEY-AT-LAW
SMITHFIELD, VA.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight May 13th. 1913 at three thirty o'clock P.M. this deed was received and with the certificates annexed, admitted to record.

Teste, E. Johnson Clerk.

State of VIRGINIA,

County of Isle of Wight, to-wit:

I, I. E. Pelham, a Notary Public in and for the County aforesaid, State of Virginia, whose commission as such expires on the 14th day of January, 1917, do hereby certify that George W. Whitley, Attorney in fact for J. L. Libby, Mary E. Libby, C. A. Libby, Della Libby, and Carrie C. Libby, whose names are signed to the writing hereunto annexed, bearing date on the 12th day of May, 1917, have signed the names of the said J. L. Libby, Mary E. Libby, C. A. Libby, Della Libby, and Carrie C. Libby to the said writing, and has acknowledged the same as their Attorney in Fact before me in my County aforesaid.

Given under my hand this 19th day of May, 1917.

I. E. Pelham Notary Public.

State of Virginia,

County of Isle of Wight, to-wit:

I, I. E. Pelham, a Notary Public in and for the County aforesaid, State of Virginia, whose commission as such expires on the 14th day of January, 1917, do certify that W. E. Whitley, Jr., and W. H. Morgan, Trustee, whose names are signed to the writing hereunto annexed, bearing date on the 12th day of May, 1917, have acknowledged the same before me in my County aforesaid.

Given under my hand this 19th day of May, 1917.

I. E. Pelham Notary Public.

trances, and that they, the said parties of the first part, will execute such further assurances of the said land as may be requisite.

At the request of D. D. Gwaltney, Jr., signified to by the signing and sealing of this deed by the said D. D. Gwaltney, Jr., F. R. Berryman, trustee in a certain deed of trust executed by J. A. Sibby to the said F. R. Berryman, trustee, to secure a certain debt to D. D. Gwaltney, Jr., said deed of trust being recorded in the Clerk's office for the County of Isle of Wight, in D. B. 74 page 149, does hereby convey unto the said J. A. Sibby all of his right, title and interest in and to the property above mentioned or described. And the said D. D. Gwaltney, Jr. does hereby relinquish and release all of his right, title and interest in and to the property hereby conveyed.

Witness the following signatured and seals:

J. A. Sibby (Seal)
By Wm. T. Whitley
Attorney in fact.

Mary E. Sibby (Seal)
By Wm. T. Whitley
Attorney in fact.

C. A. Sibby (Seal)
By Wm. T. Whitley
Attorney in fact.

Della Sibby (Seal)
By Wm. T. Whitley
Attorney in fact.

Carrie G. Sibby (Seal)
By Wm. T. Whitley
Attorney in fact.

D. D. Gwaltney, Jr. (Seal)

F. R. Berryman Trustee. (Seal)

the powers granted in the said power of attorney, and

WHEREAS, the said George F. Whitley, attorney in fact by virtue of the said power of attorney, has sold to J. F. Minton the real estate devised by the said will, and of which the said Margaret W. Libby died seized and possessed:

NOW, THEREFORE, THIS DEED, made and entered into this 12th day of May, 1913, between J. A. Libby and Mary E. Libby, his wife, C. A. Libby and Della Libby, his wife, and Carrie G. Libby (by George F. Whitley, their duly appointed attorney in fact), parties of the first part, and J. F. Minton, of the Town of Smithfield, County of Isle of Wight, State of Virginia, party of the second part.

W I T N E S S E T H:

That for and in consideration of the sum of Seven Thousand ($7,000.) Dollars, and other consideration, the receipt whereof is hereby acknowledged, the said parties of the first part do grant unto the said party of the second part, with General Warranty, the following real estate, to-wit: All that certain tract, piece or parcel of land situate, lying and being in the County of Isle of Wight, State of Virginia, containing by estimation Two Hundred and Fifty-Seven (257) acres, sale and conveyance to be made in gross and not by the acre, bounded and described as follows: by the lands of E. K. Batten, Sue A. Minton, Allan Johnson, the lands belonging to the estate of Mills E. Minton, and what is known as "West Hill Creek". It being the same piece or parcel of land of which Margaret W. Libby died seized and possessed, and which was devised to the said J. A. Libby, C. A. Libby and Carrie G. Libby by the last will and testament of the said Margaret W. Libby which is to be probated contemporaneously with the recordation of this deed.

The said parties of the first part covenant that they have the right to convey the said land to the grantee; that they have done no act to encumber the said land; that the grantee shall have quiet possession of the said land, free from all encum-

WHEREAS, Margaret W. Libby was in her lifetime seized and possessed of certain real estate situate near the Town of Smithfield, in the County of Isle of Wight, State of Virginia, and

WHEREAS, the said Margaret W. Libby departed this life sometime during the year 1900, testate, leaving surviving her one child, J. A. Libby, and Rose V. Libby, his wife, who has since died, and the following grandchildren: C. A. Libby and Carrie C. Libby, and

WHEREAS, by the last will and testament of the said Margaret W. Libby, the land hereinafter described was devised to the said J. A. Libby for life, with a certain interest therein to the widow of the said J. A. Libby, should he leave a widow, remainder to the said C. A. Libby and Carrie C. Libby, and

WHEREAS, the said will, which has never been probated, is to be probated contemporaneously with the recording of this deed, and

WHEREAS, the said J. A. Libby has executed a deed of trust to W. E. Berryman, Trustee, to secure to F. D. Gwaltney, Jr. a certain debt described therein, which deed of trust is recorded in the Clerk's Office for the County of Isle of Wight, and

WHEREAS, it is the desire of all parties interested that the debt secured by the said deed of trust shall be paid, and that the real estate devised by the said will shall be sold, and

WHEREAS, the said J. A. Libby and Mary E. Libby, his present wife, and the said C. A. Libby, and Nella Libby, his wife, and the said Carrie C. Libby, have, by a power of attorney dated on the 9th day of January, 1913, and properly executed, and to be recorded contemporaneously with this deed appointed George T. Whitley their attorney in fact to sell the said real estate, and to execute a deed to the purchaser for same, and to further carry into effect

3 D Exhibit "D"

Hunter

T. ... Tribble, Plaintiff,

Tribble

Cy No 745

SO) ... DEFENDANT AND ...

T. W. ... Defendant.

Virginia: Clerk's ... Circuit Court of the County of Isle of Wight

June 7 ..... 1945.

Recorded in D. B. No. 81 ..... page 428

State Tax, - - - $ 5.00

Clerk, - - - - $ 1.40

Commr. Revenue, - - $ .....

Total, - - $ 6.40

Paid .....

EXAMINED AND VERIFIED

GEORGE F. WHITLEY
ATTORNEY-AT-LAW
SMITHFIELD, VA.

State of Virginia,
County of Isle of Wight, to-wit:

I, George F. Whitley, a Commissioner in Chancery for the Circuit Court for the County of Isle of Wight, in the State of Virginia, do certify that J. A. Libby and Mary W. Libby, whose names are signed to the writing hereunto annexed, bearing date on the 18th day of May, 1913, have acknowledged the same before me in my County aforesaid.

Given under my hand this 27 day of May, 1913.

Geo. F. Whitley.
Commissioner in Chancery.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight June 2nd. 1913 at eleven o'clock A. M. this deed was received and with the certificate annexed, admitted to record.

Teste, A. P. Johnson Clerk.

and which was devised to the said J. A. Libby, and C. A. Libby and Carrie A. Libby by the last will and testament of the said Margaret W. Libby.

And for the consideration aforesaid, the said J. A. Libby and Mary E. Libby do hereby covenant and agree with the said J. F. Minton, his heirs and assigns, that no child, or children of theirs, or heirs, assigns of any child, or children of theirs, shall ever assert any right, title, claim, or interest of whatever kind or nature, in and to the above described property; and the said J. A. Libby and Mary E. Libby do hereby covenant that a lien shall hereby be created upon the property which is now owned by the said J. A. Libby and Mary E. Libby, or which shall at any future time be owned by them, as well as any interest in and to any property which is now owned, or may be hereafter owned by them, for the purpose of saving harmless the said J. F. Minton, his heirs or assigns, of any damage or damages of whatever kind which may be sustained by the assertion of any right, title, claim, or interest in and to the above described property, by any child, or children of the said J. A. Libby and Mary E. Libby, or the heirs or assigns of any child or children of the said J. A. Libby and Mary E. Libby.

The said J. A. Libby and Mary E. Libby covenant that they have the right to convey their right, title and interest in and to the said property, and that they have the right to encumber for the purpose aforesaid, the property now owned by them.

Witness the following signatures and seals:

J. A. Libby (Seal)

Mary E. Libby (Seal)

THIS DEED, made this 19th day of May, 1913, between J. A. Libby and Mary E. Libby, his wife, of the Town of Smithfield, State of Virginia, parties of the first part, and J. F. Hinton, of the Town and State aforesaid, party of the second part.

W I T N E S S E T H:

THAT WHEREAS, the said J. A. Libby and others, by George T. Whitley, Attorney in fact, did convey to the said J. F. Hinton, by a deed lately recorded in the Clerk's office for the County of Isle of Wight, certain real estate mentioned therein and hereinafter described; and

WHEREAS, the said J. A. Libby and Mary E. Libby desire to further convey their interest in the said real estate in their own name, and further to personally guarantee the title to the said real estate to the said J. F. Hinton; and further to save his heirs or assigns
the said J. F. Hinton harmless of any damages which he might sustain by the assertion at any time, of any right, title, or interest in the said real estate by the child or children of the said J. A. Libby and Mary E. Libby:

NOW, THEREFORE, THIS DEED WITNESSETH: That for and in consideration of the sum of Five ($5.00) Dollars, the receipt whereof is hereby acknowledged, and for the consideration as mentioned in the aforementioned deed, of which this deed is to be considered a part and parcel, the said J. A. Libby and Mary E. Libby doth hereby convey, with General Warranty, unto the said J. F. Hinton, all of their right, title and interest in the following real estate: All that certain tract, piece or parcel of land situate, lying and being in the County of Isle of Wight, State of Virginia, containing by estimation Two Hundred and Fifty-seven (257) acres, bounded and described as follows: By the lands of E. T. Sutton, Geo A. Hinton, Allen Johnson, the lands belonging to the estate of Wills T. Hinton, and that is known as "West Hill Creek". It being the same piece or parcel of land of which Margaret E. Libby died seised and possessed

9

Muston

v. } Cy No 7145

Libby et als

Copy of Spl Comrs Bond

VIRGINIA: CLERKS OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT

Apl 7 1919

Teste, A Johnson Clerk

No.

Know all Men by These Presents: That we J. A. Thomas

principal ,

and Fidelity and Deposit Company of Maryland

suret y ,

are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of FOUR THOUSAND DOLLARS, to the payment whereof well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

And as to this bond we hereby severally waive the benefit of our Homestead Exemption, and also any right, claim or privilege to discharge any liability arising hereunder to the said Commonwealth, or by virtue of the said office or trust for which this bond is given, with coupons detached from the bonds of this State.

IN TESTIMONY WHEREOF, the said J. A. Thomas principal ,
has hereto set his hand and seal
and the said Fidelity and Deposit Company of Maryland, suret y ,
by George S. Guy , its duly authorized
agent and attorney in fact, has caused its corporate name and seal to be hereunto affixed, the said seal to be attested
by the signature of the said George S. Guy, , its said agent and attorney
in fact, this, the 7th. day of April , A. D. 19 19.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bound J. A. Thomas, who was,
on the 7th. day of April, 1919, appointed Special Commissioner in the suit pending
in the Circuit Court of the County of Isle of Wight, in which J. F. Minton is
the complainant, and Mary E. Libby and others are defendants, Docket No. 245,

shall faithfully discharge the duties of his office or trust as such Special Commissioner,
, then the above obligation to be void, or else to remain in full force and virtue.

J. A. Thomas [SEAL]

Fidelity and Deposit Company of Maryland,

(SEAL)

By George S. Guy.

Its duly authorized agent and attorney in fact.

Attest: George S. Guy.

Agent and attorney in fact.

Virginia: In the Clerk's Office of the Circuit Court of the County of Isle of Wight the 7th.
day of April 19 19 , this bond was duly executed and acknowledged by the obligors to the same
and ordered to be recorded.

A Copy, Teste, A Johnson Clerk. A. S. Johnson Clerk.