1868-017

BENJAMIN CROSS BY RICHARD W. H. BARDEN VS HENRY AUSTIN & WIFE ETC.

1868

CHANCERY CAUSES

NANSEMOND COUNTY
(SUFFOLK)

SURNAMES:

N.B. WILL OF BENJAMIN CROSS, NANSEMOND COUNTY, 1859

In the name of God Amen: I Benjamin Cross of Nansemond County and State of virginia, being sick and weak in body but of sound mind and memory: do make and ordain this my last will & testament in manner and form following. (i e)

1st: I desire that my beloved wife Nancy Cross retain so much of my real and personal estate, as will enable her to keep house, and support herself and my three children John Dela[illegible]ware Cross, Sarah Louisa Cross, and Francis Walker Cross.

2nd: I desire that my executor hereafter named hire out my negroes sell the remainder of my household kitchen furniture, crop, stock of every kind, and with the money accruing therefrom pay my just debts.

3rd: After my just debts are paid, I desire that my beloved wife Nancy Cross keep all of my estate real and personal together for the free use and benefit of herself and my three children herein named - untill my youngest son Francis Walker Cross shall arrive to his eighteenth year. In the event my youngest son herein named, should die before he arrives to the above age, I desire my estate to remain undivided untill my oldest son arrives at his twenty first year. If my beloved wife Nancy Cross should die before either of my sons arrive to the age herein specified, it is my desire that my estate shall remain undivided untill they shall have arrived to the above age.

4th: In the event my beloved wife Nancy Cross, my three children herein named should live untill my youngest son Francis W. Cross, arrives to his eighteenth year.

5th: I give and bequeath all of my estate which remain real and personal to be equally divided between my beloved wife Nancy Cross, my three children, John D. Cross, Sarah L. Cross and Francis W. Cross, to them and their heirs forever.

6th: And lastly I do hereby constitute and appoint my Father in law: John W. Darden executor of this my last will and testament hereby revoking all other or former wills or testaments by me heretofore made. In witness whereof I have

hereunto set my hand and affixed my seal This 29th: day of May
In the year of our Lord one thousand eight hundred and forty nine
Signed sealed, published, and declared as and for the last will and testament of the above named Benjamin Cross In presence of us:

Benja. Cross (Seal)

Edwd: Howell
Dempsey H. Darden
Henry his X mark Austin

At a Quarterly Court held for Nansemond County the 12th: day November 1849.
This last will and Testament of Benjamin Cross deceased, was proved by the solemn affirmations of Edward Howell, Dempsey H. Darden and Henry Austin The subscribing witnesses thereto and was ordered to be recorded: and on the motion of John W. Darden The Executor therein named, who made oath according to Law; and with Dempsey H. Darden his security, who justified, entered into and acknowledged in the penalty of One Thousand Dollars - conditioned as the law directs. Certificate is granted him for obtaining a probat of the said will in due form.

Teste,
Ro. R. Prentis. D.C.

At a Monthly Court held for Nansemond County, The 14th: day of February 1859.
It appearing to the Court that John W. Darden, Executor of the last Will and Testament of Benjamin Cross deceased, hath departed this life: on the motion of Henry Austin, who made oath as administrator with the Will annexed, and together with Patrick H. Lee and Henry Hare his securities, who justified, entered into and acknowledged a bond in the penalty of Three Thousand dollars, conditioned as the law directs: Letters of administration de bonis non with the Will annexed of Benjamin Cross deceased, in due form are granted him: which bond is ordered to be recorded.

Teste,
Peter B. Prentis. Clerk.

A copy,
Teste,
Peter B. Prentis. Clerk

Benjamin Cross'
Will

(A copy)

(A)

Cross. for
Def.

Austin Smith sworn

1 Exhibit filed
with the Rec

The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Henry Austin and Nancy his wife, and the said Henry Austin admr de bonis non with the will annexed of Benjamin Cross dec^{d} Sam^{l} Darden & Sarah L. his wife, and Francis W. Cross, the last, an infant.

to appear at the Clerk's Office of our Circuit Court, for the County of Nansemond, on the first Monday in August next, 1866, being rule day, to answer a bill in chancery, exhibited against them, by Benjamin W. Cross, an infant, suing by Richard W. H. Darden his Uncle and next friend.

and unless they shall answer the said bill by the next rule day thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. *Witness*, PETER B. PRENTIS, Clerk of our said Court, at his Office, this 5th day of July 1866, and in the 91st year of the Commonwealth.

Peter B. Prentis, Clerk.

☞ The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

Kilby. P.C

Benjamin W. Cross.

an infant &c

vs Summons in Chy.

Henry Austin & wife &c.

To August Rules 1866

Executed July 25th 1866. And a true Copy hereof delivered to Henry Austin & Caroline Austin

Thos Kilby Sh'ff

Pro. 6. Ad: 1. L: 8

Cri: Co

1868 Jan. 8 Rec'd of Henry Austin
adm'r of Benj^a Crisp dec'd the sum
of Seventy six dollars in full for the
Costs obtained and allowed him, in
settlement of said estate, under proceedings
in a Chancery suit in Circuit Court of
Nansemond County in name of Benj^a
Crisp against said adm'r.

John R. Kirby atty
for Committee of Heirs

$76.

1868 Jan. 8 Rec'd of Henry Austin adm'r. &c. of Benj. Culp dec'd. the sum of Twenty five dollars and 31 4/7 cents amo. decreed to me by decree of Circuit Court of Nansemond County at October Term 1867 in the cause therein pending wherein Benj. W. Culp &c. is Plaintiff and said Austin adm'r &c. Defendant

$25.31 4/7

Samuel Darden

1868 Jan: 8 Recd. of Henry Austin adm of Benja Crop dec'd the sum of Twenty one dollars and sixty nine 69/100 cents amo. due me under decree of Hanover Circuit Court of Benja Crop &c. against Henry Austin adm of Benj Crop dec'd.

Attest Samuel Sarden $21.69 69/100 Benja E Crop

Frank Wm Cross

1868 Jan: 8 Recd. of Henry Austin adm of Benja Crop dec'd the sum of Twenty five dollars and thirty one 31/100 cents, being amount decreed to me by decree of Hanover Circuit Court of Octo. Term 1867 in the cause therein pending of Benja Crop &c against Henry Austin adm of Benj Crop dec'd

Attest Benja E Crop $25.31 31/100 Frank Wm. Cross

Mills J Sarden

At a Circuit Court held for Nansemond County the 12th. day of October 1867.

Benjamin W Cross, an infant, suing by Richard W H Wardon, his uncle and next friend ..... Plaintiff,

against

In Chancery

Henry Austin and Nancy his wife, and the said Henry Austin administrator de bonis non with the will annexed of Benjamin Cross dec'd, Saml Wardon and Sarah L. his wife, and Francis W. Cross; the last, an infant ..... Defendants.

This cause, came on this day to be again heard on the papers formerly read and on the Report of Commissioner Prentis, made pursuant to the Decree of the 13th. of October 1866. to which Report, there is no exception and was argued by Counsel: On consideration whereof, the Court doth confirm the said report, and doth adjudge order and decree that Henry Austin administrator de bonis non with the will annexed of Benjamin Cross deceased, out of the sum of Seventy-five Dollars retained by him for that purpose in his administration account to Wit: Account No 1. of said Commissioner Prentis' Report, pay the Costs of this suit, and then pay the sum of Ninety-seven dollars and Sixty three cents, which also appears by said account, to be in his hands as such administrator, to the following persons, to Wit: To Benjamin W. Cross the Plaintiff, in

Twenty one Dollars and Sixty nine and five tenths cents. To Henry Austin and Nancy his wife, Twenty five Dollars and thirty one and four twenty seventhes cents. To Samuel Warden and Sarah L. his wife, Twenty five Dollars and thirty one and four twenty seventhes cents. and to Francis W. Crofs, Twenty five Dollars and thirty one and four twenty seventhes cents; and make report to Court, and filing therewith, the evidence of such payments, and the Court doth adjudge order and decree that Adolphus H. Jones, Wm. W. Warden, R. W. H. Warden and Arthur E. Hall, be and they are hereby appointed Commissioners for that purpose (any three of whom may act) proceed to make division of the lands in the proceedings mentioned whereof Benjamin Crofs died seized and possessed, to Wit: a tract of land in the County of Nansemond containing one hundred and thirty three acres, more or less, and adjoining the lands of Henry Jernigan, Uriah Rawls, Hardy Crofs' Estate and John W. Warden's Estate, and that in making such division the said Commissioners will set apart and assign to Benjamin W. Crofs the plaintiff Thirty nine one Hundred and fifteenths of the same. To Nancy Austin wife of Henry Austin Thirty seven one Hundred and fiftieths. To Sarah L Warden, wife of Samuel Warden, Thirty seven one Hundred and fiftieths. and to Francis W Crofs. Thirty seven one Hundred and fiftieths of same, having regard

to quantity and quality, and make report to Court.

A Copy

Test,

Peter B. Prentis. Clerk.

To the Circuit Court of Nansemond County:

The Undersigned respectfully reports to Court, that, pursuant to the Decree of the 12th. day of October 1867, made in the Cause in said Court pending, wherein Benjamin W. Cross, an infant, &c is Plaintiff, and Henry Austin & Nancy, his wife & al: are Defendants, he has paid out the several sums of money, as therein directed, as the following Statement and receipts will show: viz:

To Costs paid John R. Kelly, Att'y: for Costs of Suit, per receipt . . . $76.00

" do. do Samuel Darden do . . . 25.34 4/7

" " " Benja: E. Cross " 21.69 5/7

" " " Frank W. Cross " 25.31 4/7

" retained for Henry Austin & wife . . . 25.31 4/7

Respectfully submitted.

Henry Austin.

Admr: de bonis non with the will annexed of Benjamin Cross dec'd

Benj[a]. W[m]. Crosby Jun: Exec[r]

vs. } Report of Payments by Henry
Austen. admr &c

Henry Austen Lunatic &c

1868. April 25th Filed
Cl[k]:

At a Circuit Court held for Nansemond County, the 13th: of October 1866.

Benjamin W. Cross, an infant, suing by Richard W. H. Darden,
his uncle and next friend. . . . . Plaintiff.

Against &c In Chancery

Henry Austin and Nancy his wife, and the said Henry Austin
admr de bonis non with the will annexed of Benjamin Cross.
dec'd, Sam'l Darden and Sarah L. his wife, and Francis
W. Cross, the last an infant. . . . . Defendants.

This cause came on to be heard on the bill of the Complainants, taken for confessed as to the adult defendants on whom process had been duly served and they still failing to appear and answer, and on the exhibit filed with the said bill, and on the answer of the infant defendant by Peter B. Prentis his guardian ad litem, and with general replication to said answer, and was argued by counsel. On consideration whereof the Court doth adjudge order and decree, that a Commissioner of this Court take the following accounts. First. An account of the transactions of Henry Austin as administrator de bonis non, with the will annexed of Benjamin Cross deceased. Second. An account of the real estate of which the said Benjamin Cross died possessed, and whether partition thereof among the heirs would be best for their interests and practicable, or whether it would best serve the interests of all parties by a sale thereof and division of the proceeds. Third. A statement shewing the fractional parts, to which each party is entitled of said Benjamin Cross' estate, and make report to Court, with any matters specially stated deemed pertinent by himself, or which any of the parties may require to be so stated

A Copy:

Teste,

Peter B. Prentis. Clk

Commissioner's Office.
Suffolk Va July 15th 1867

To Benjamin W. Crafs, an infant, suing by Richard W. H Darden his uncle and next friend ..... Plaintiff.

and To.

Henry Austin and Nancy his wife and the said Henry Austin .. admor de bonis non with the will annexed of Benjamin Crafs decd. Saml Darden and Sarah E his wife and Francis W. Crafs, the last an infant. ..... Defendants.

You are hereby notified that I have appointed Thursday the 15th day of August 1867, in to take and settle at my office, the following accounts. First an Account of the transactions of Henry Austin, as administrator de bonis non with the will annexed of Benjamin Crafs deceased.

Seconds. an account of the real estate of which the said Benjamin Crafs died possessed and whether partition thereof among the heirs would be best for them interests and practicable, or whether it would be best serve the interests of all parties by a sale thereof and division of the proceeds

Third. a statement shewing the fractional parts to which each party is entitled to of said Benjamin Crafs estate, which accounts are required to be taken by the Decree of the Circuit Court of the County of Nansemond, rendered on the 13th of October 1866. in a suit in Chancery depending in said Court, in which you are parties Plaintiff and defendants, at which time and place, you are required to attend. Given under my hand as Commissioner in Chancery of the Circuit Court of Nansemond County. the day and year first herein aforesaid.

Peter B. Prentis.

Commissioner

Service of the within notice acknowledged by us

Henry X Austin
his
mark

Samuel Darden

Peter B. Prentis. q.k: ad [illegible]

John R. Kelly atty for
plff.

Service of the within notice acknowledged by us

Samuel Darden

Peter B. Prentis. q.k: ad [illegible]

John R. Kelly atty for
plff.

Acco: No: 1

Dr The Estate of Benjamin Cross deceased.
In Account with Henry Austin, Administrator de bonis
now with the will annexed

1866. Decr: 29	By Amo: of Acco: Sales of Chattel Estate					177	57
	To paid W.S. Dueck tax on land, per rect:		1	09			
	" " Shff: Land tax for 1866 do			84			
	" " A.E. Hall, services at sale "		3	00			
1867. July 10	By this sum received of George T. Wallace for hire of Negro Sam in 1862: Atty's fee having been deducted					20	91
" " "	To reserved to pay Clerk of Nansemond County Court for recording & filing Acco: Sales		1	00			
" " "	" paid James F. Howell per receipt		10	00			
	" reserved to pay costs of suit &c		75	00			
	" 5 pr: Cent Comm[s] on $198:48 (receipts)		9	92			
	" This sum due Estate to bal: acco:		97	63			
		$	195	48	$	195	48
1867. Aug: 15	By Bal: due Estate Brot: down				$	97	63
	And which should be distributed as follows:						
	To Benjamin W. Cross, the Plaintiff.						
	(ascertained, as though there were no will)	$	21	69	5/9		
	" Henry Austin & Nancy his wife . . .		25	31	4/27		
	" Samuel Darden & Sarah L. his wife		25	31	4/27		
	" Francis W. Cross		25	31	4/27		
		$	97	63	$	97	63

Acco: No: 2

An Account of the Real Estate of which Benjamin Cross died possessed, and whether partition thereof among the heirs would be best for their interests and practicable, or whether it would best serve the interest of all parties by a sale thereof and division of the proceeds.

A Tract of Land, containing One Hundred and thirty-three (133) acres, more or less - adjoining the lands of Henry Jernegan, Uriah Rands, Hardy Cross' Estate and John W. Darden's Estate.

From information laid before the Commr: and at the request of one of the parties, he reports that a sale of said land is not desirable, and recommends that a division thereof, in kind, be had.

Commr

Acco: No: 3

A Statement shewing the fractional parts to which each party is entitled, of Benjamin Cross' Real Estate.

To Ascertain the Plaintiff's interest in the Land, which is valued at $600 - the entire tract - I then valued the Dower therein (supposing there had been no will) at $132, in fee, which being deducted from the whole, leaves $468, of which the Plaintiff is entitled to 1/3, or $156 or . . . 39/150

And the Balance, as follows.

To Nancy Austin, wife of Henry Austin . . . 37/150

" Sarah Louisa Darden, wife of Samuel Darden 37/150

" Francis W. Cross 37/150

150/150.

Commr

Commissioner's Office
Suffolk, Va: Aug: 15th: 1867

To the Circuit Court of Nansemond County:

Pursuant to a Decree of the Circuit Court of Nansemond County, rendered on the 13th day of October 1866, in a suit in Chancery depending in the said Court, between Benjamin W. Cross, an infant, suing by Richard W. A. Darden, his uncle and next friend, Plaintiff: and Henry Austin and Nancy, his wife & others, Defendants, The undersigned, one of the Commissioners of said Court, to whom was referred for settlement, the several accounts directed to be taken thereunder, begs leave to report, that on this day, having given all the parties interested due notice, he proceeded to take and settle the same: (They, together with their counsel appearing in obedience to said notice). That upon a statement of the transactions of Henry Austin, as admr: de bonis non with the Will annexed of Benjamin Cross deceased, he finds a balance of $97:13 due the said Estate by said admr: on this day, as shewn by accompanying acco: No: 1.

That acco: No: 2 shews, that a sale of the Real Estate of which said testator died possessed is not desired by the parties, but that a division in kind, is recommended.

That Acco: No: 3 shews, the fractional part to which each party is entitled, of said Real Estate.

Your Commissioner deems it pertinent to report specially, That, though the admr: qualified in 1859, no account of profits arising from said estate has been taken, inasmuch as they were consumed by all the parties, interested and equally

entitled to share therein, under the Testators will.

Your Commissioner further reports to the Court, that after the Completion of the said accounts, he retained the same in his Office ten days for the examination of the parties, which with the Decree and Notice aforesaid and acknowledgments of its service are herewith returned.

Given under my hand, as Commissioner aforesaid, the day and year first aforesaid.

Peter B. Prentis.
Commissioner

Benjamin W. Crosby
for Pltfs
25 ℔ Comms: Report

Henry Austin & wife Def.

Aug: 15th 1867 Completed and filed in my Office.
Peter B. Prentis.
Comr.

1867 August 24th: 1867. Filed

at a Court held for Rawsemond County
the 12th day of October 1867.

Benjamin W. Crafs an infant suing by
Richard W. H. Darden his uncle and next
friend . . . . . Plaintiff

against

In Chancery

Henry Austin and Nancy his wife and
the said Henry Austin administrator de
bonis non with the will annexed of Benja
min Crafs dec'd. Sarah Darden and Sarah
L. his wife; and Francis W. Crafs, the last
an infant . . . . . Defendants

This cause came on this day to be again heard on the
papers formerly read and on the Report of Commissioner
Prentis, made pursuant to the decree of the 13th of Octo-
ber 1866. to which Report, there is no exception, and was
argued by Counsel: on Consideration whereof, the Court
doth confirm the said report, and doth adjudge
order and decree that Henry Austin adminis-
trator de bonis non with the will annexed
of Benjamin Crafs dec'd out of the sum of
Seventy four Dollars claimed by him for that
purpose in his administration account
to last account No 1. of said Commissioner
Prentis' Report, pay the costs of this suit, and
then pay the sum of Ninety seven dollars
and Sixty three cents, which also appears
by said account, to be in his hands as

Jack. administrator, to the following persons to Wit: to Benjamin W. Crosby the sum of Twenty one Dollars and Sixty nine and four tenths cents: to Henry Austin and Nancy his wife Twenty four Dollars and Sixty one and four twenty seventhy cents. To Samuel Warden and Daniel L. his wife Twenty four Dollars and Sixty one and four twenty seventhy cents: and to Francis W. Crosby Twenty four Dollars and Sixty one and four twenty seventhy cents. and make report to Court and filing therewith the order of such payments: and the Court doth adjudge order and decree that Adolphus H. Jones, Wm. W. Warden R. W. H Warden and Arthur E. Hall, be and they are hereby appointed Commissioners for that purpose / any three of whom may act / proceed to make division of the lands in the proceedings mentioned whereof Benjamin Crosby died seized and possessed to wit: a tract of land in the County of Rappahannock, containing one hundred and sixty three acres, more or less and adjoining the lands of Henry Jarman, Isaiah Rawls, Hardy Crosby estate and John W. Warden Estate and that in making such division

the said Commissioners will set apart and assign to Benjamin W Crosp the plaintiff, Thirty nine one Hundred and fifty eighths of the same. To Nancy Austin wife of Henry Austin, Thirty seven To Sarah L Darden, wife of Samuel Darden, Thirty seven one Hundred and fifty eighths, one hundred and fifty eighths; and to Francis W. Crosp, Thirty seven one hundred and fifty eighths of same, having regard to quantity and quality and make report to Court.

Roby & Co.

Peter B. Prentis. Clerk

We the undersigned Commissioners, do hereby certify that we have executed the order of the annexed decree to the best of our skill and ability.

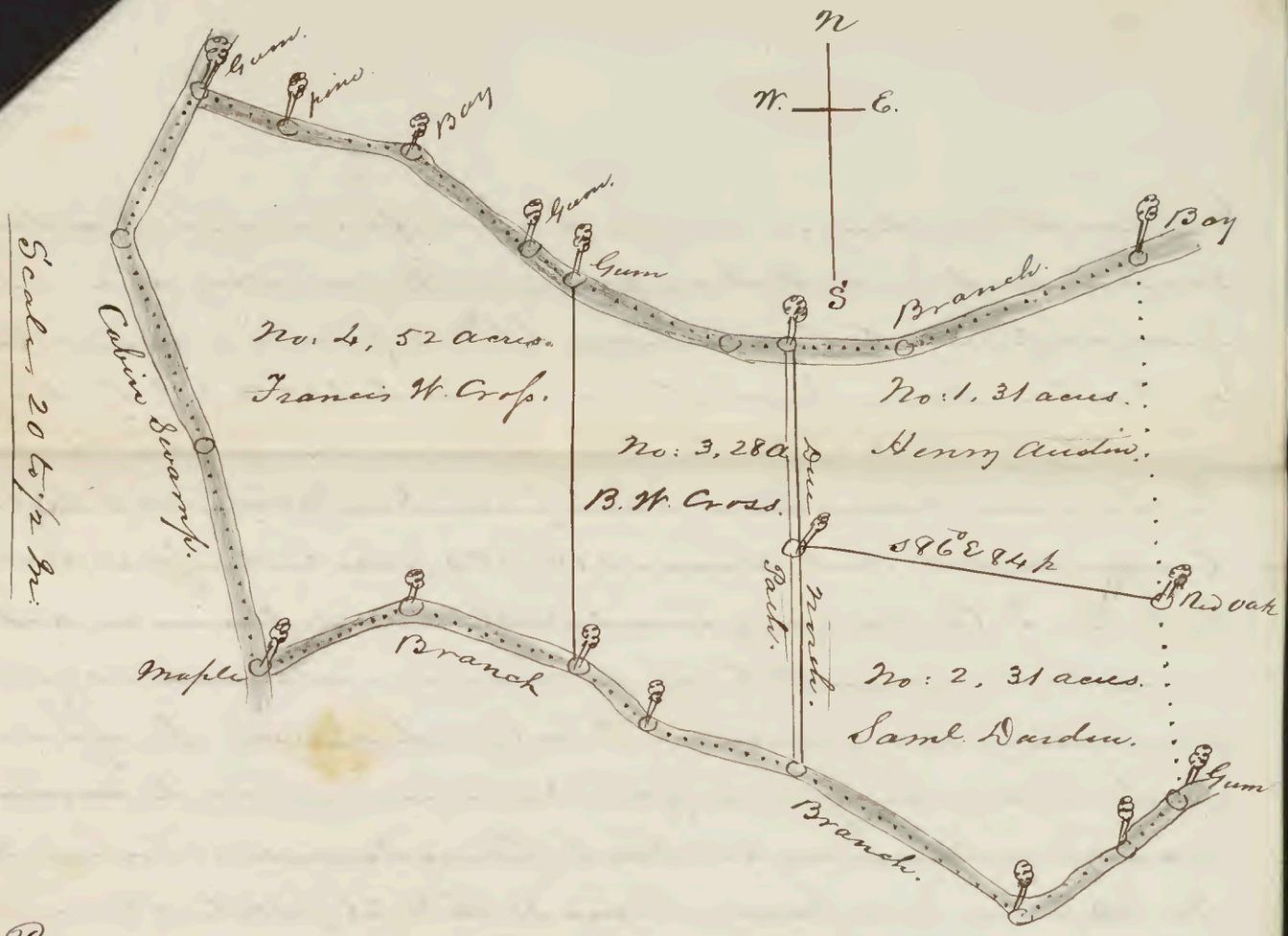
A H. Jones.
Wm W. Darden Comm'rs
A E. Hall.

Xmd

Benj^a W^m Crosby, an infant &c

vs } Co: Decree

Henry Austin & wife &c:



Pursuant to a decree of a Circuit Court, held for Nansemond County, on the 12th day of October 1867. Cross against Austin &c, We the undersigned Commissioners mentioned in said decree, for purposes therein expressed, proceed on the 1st day of February 1868. to divide into four equal shares, having regard to quality as well as quantity, the lands which of Benjamin Cross dec'd and prospect, adjoining the lands of Henry Jernigan, Uriah Rawls, Hardy Cross Est, and Jno H. Darden's Est. Containing One Hundred and forty two acres, by actual Survey, be the same more or less: Which shares according to their numbers are marked and bounded as follows.

Lot No: 1, Containing Thirty one acres, drawn by and assigned to Henry Austin, in right of his wife Nancy Austin, is marked and bounded as follows: Beginning at a Bay a Corner on the lands of Henry Jernigan, thence along Rawls line, 85° E. 79 poles to a red Oak, thence N 86° W 84 poles to the path, thence along said path Due North 49 poles to a branch, thence up said branch, 80 poles, to the first station.

Lot No: 2, Containing Thirty one acres, drawn by and assign-

to Samuel Darden, in right of his wife Sarah L. Darden, is marked and bounded as follows: Beginning at a red oak near said Rands line, thence S5°E45 poles to a Gum, a Corner on Dardens heirs, thence down a branch S43°W.16 poles to a pine, thence S56°W 28.3 poles to a sweet gum, thence N56°W6 poles to the path, thence along said path Due North, 49 poles, to a Corner on Lot No: 1, thence S86°E84 poles to the first station.

Lot. No: 3, Containing Twenty eight acres, drawn by, and assigned to Benjamin W. Crop, is marked and bounded as follows: Beginning at a branch at its intersection with the aforesaid path, thence along said path Due South 98 poles, to another branch, a Corner on Lot No: 2. thence down said branch N74½ W 34 poles to a Gum, thence N54°W. 20 poles to a Gum a Corner on Lot No: 4, thence N3°W88 poles to a Gum, standing in a branch, thence up said branch its various Courses 52 poles to the first station.

Lot: No: 4, Containing Fifty two acres, drawn by and assigned to Francis W. Crop, is marked and bounded as follows: Beginning at a Gum a Corner of Lot No: 3, thence S3°E 88 poles to a Gum, a Corner on Lot No: 3, thence down a branch N71½ W.40 pls a Gum, thence S66°W38 poles to a maple at the Cabin swamp, thence up said swamp the various Courses thereof 134 poles to a Gum, thence up a branch, the various courses thereof 96 poles to the first station.

Respectfully submitted

A. A. Jones. }
Wm W. Darden. } Commrs.
A E. Hall. }

Cost.

Commrs fee 3.00
Surveyors " 11.00

Commissioners Report

On

Benj.a Crosf. Land

1868.

1868. Appl: 25th. Filed.

clk:

Cross &c
vs
Austin Cross &c

this Cause, came on this day to be again heard on the Papers formerly read and on the Reports, made respectively by Henry Austin administrator de bonis non with the will annexed of Benjamin Cross deceased and Adolphus H Jones Wm. W Warden and Arthur E. Hall pursuant to the decree of the 12th day of October 1867. to which Reports there is no exceptions and was argued by Counsel: On Consideration whereof the Court doth confirm the said reports and doth adjudge order and decree that the proceedings had in this Cause be confirmed and made final, and that the Cause be removed from the Docket

Crofs &c
vs
Austin & Wf. &c

1868

Octo Court

Final Decree
To be entered
R. H. Baker

Entd

Cusp & v. Austin &c

This cause came on this day to be again heard on the papers formerly read & the Report of Com. Pruitt made pursuant to the decree of the 13th of Oct 1866; to which report there is no exception, and was argued by Counsel: On consideration whereof, the Court doth Confirm the said Report & doth adjudge, order & decree that Henry Austin adm. de bonis non with the will annexed of Benja Cusp dec'd. out of the sum of $75. retained by him for that purpose in his administration account (to wit. account No. 1. of said Com. Pruitt's report) pay the costs of this suit and then pay the sum of $97.63 which also appears by said account to be in his hands as such adm'r, to the following parties, to wit: To Benj'a W. Cusp, the plaintiff $21.69 7/9 — To Henry Austin & Nancy his wife $25.31 4/27 — To Saml. Darden & Sarah L. his wife $25.31 4/27 & to Francis W. Cusp $25.31 4/27, & make Report to Court, & filing herewith the evidence of such payments — And the Court doth adjudge, order & decree that adopting H. Ivey, Wm. Darden, R. W. H. Darden, & Arthur E. Hall, be and they are hereby appointed Commissioners

for that purpose (any three of whom may act) proceed to make division of the Lands in the proceedings mentioned whereof Benjamin Crisp died seized and possessed, to wit: a tract of land in the County of Nansemond Containing one hundred & thirty three acres, more or less & adjoining the Lands of Henry Jamegan, Noah Ramey, Hardy Crisp's estate and John W. Darden's Estate, and that in making such division, the said Comm. were set apart and assigned to Benjamin W. Crisp the plaintiff 39/150 of the same: To Nancy Austin wife of Henry Austin, 37/150; To Sarah L. Darden wife of Jamme Darden 37/150, & to Francis W. Crisp 37/150 of the same, having regard to quantity & quality, and make report to Court —

Crisp &c
vs.

Austin Partition Deed
1867
Opd. Court Decree

To be entered
R. H. Barham

Entered

Virginia

At Rules held in the Clerk's Office of the Circuit Court of Nansemond County on Monday the 6th. day of August 1866.

Benjamin W. Crofs an infant, suing by Richard W. H Darden his uncle and next friend ... Complainant

against

Henry Austin and Nancy his wife, and the said Henry Austin admor de bonis non with the will annexed of Benjamin Crofs decd, and Darden & Sarah L, his wife, and Francis W Crofs, the last, an infant Defendants

In Chancery.

On the motion of the Complainant by Counsel, Peter B Prentis, is appointed guardian ad litem to defend the infant defendants in this suit, and it is ordered that notice be given the said Guardian of his appointment, by serving on him a copy of this order.

Teste:

Peter B. Prentis. Clerk.

1866. August 6th. I acknowledge service of this order, and that I have received a copy hereof.

Peter B. Prentis.

gen: ad: litem

Benja. W. Crosp. her
friend

Order of Sept. 9th:
ad litem

Henry Austin & wife
&c.

The answer of Francis W. Crofs, an infant, by Peter B. Prentis, his guardian ad litem, to a Bill in Chancery exhibited in the Circuit Court of Nansemond County by Benjamin W Crofs, an in-fant suing by Richard W. H. Darden his uncle and next friend against him Henry Austin and Nancy his wife and others

This respondent, for answer to the said Bill, answers and says, that the facts and allegations, contained in said Bill, are true as far as he knows or believes; but being an infant and ignorant of his rights, he submits the same to the Court, and prays that no order or decree may be made in the premises, to his injury: and having answered, prays hence &c

(Signed)

Peter B. Prentis.

gdn. ad litem

Benja: W. Crosp
Ux: Fund.

Answer of infant
Defts:

Henry Austin & wife &c

Crisp &c. vs. Austin &al

This cause came on to be heard on the bill of the Complts: taken for Confessed as to the adult defts: on whom process had been duly served and they also failing to appear and answer, & on the exhibit filed with said Bill & on the answer of the infant defendant, by P. B. Austin his guardian ad litem, & the general Replication to said answer, and was argued by Counsel: On Consideration whereof the Court doth adjudge, order & decree that a Comr. of this Court take the following accounts — 1st an account of the Examinations of Henry Austin as admr. de bonis non, with the will annexed of Benjn. Crisp dcd —

2d. an account of the real estate of which the said Benjn. Crisp died possessed, and whether partition thereof among the heirs would be best for their interests and practicable, or whether it would best serve the interests of all parties by a sale thereof & division of the proceeds, and

3d. a statement shewing the fractional parts to which each party is entitled to of said Benjn. Crisps estate, and make report to Court with any matters specially stated, deemed pertinent by himself, or which any of the parties may require to be so stated.

3d. An account o

Crosby &c.

vs

Austin admr &c.

1866

Oct. Ct. Decree

To be entered

R. M. B.

Entered

To the Hon: Richard H. Baker, Judge of the Circuit Court of Nansemond County.

Complaining, shew unto the Court, your Complainant, Benjamin W. Crop, an Infant under twenty one years of age, suing by Richard W. H. Darden, his Uncle and next friend —

Your Complainant respectfully represents to the Court, and says, That Benjamin Crop, of said County, died on the day of 1848 having first made and published his last will & Testament which was duly proved & admitted to be recorded in Nansemond County Court on the 12th day of November ~~October~~ 1849, as will be seen by a duly certified copy thereof filed herewith & marked (A) & asked to be taken as part of this Bill.

That the Testator left a widow named Nancy who has married & is now the wife of Henry Austin, and also left three children born before his death, to wit: John D. Crop, Sarah L. now the wife of Saml Darden, and Francis W. Crop, and that there was born to the Testator a son, your Complainant, after the Testator's death, who has not been provided for by any settlement, and is neither provided for, nor expressly excluded by the said will, but only

permitted, and also now pray to have and
succeed to, such portion of the Testator's estate
as he would have been entitled to if the
Testator had died intestate, and who also
pray that the devisees and legatees
of said Testator, shall, out of what is devised
and bequeathed to them, contribute ratably
either in kind or in money, as this Court
may in this particular case deem proper.

The Testator by the 3d. clause of his
said will, directs " after my just debts are
paid, I devise that my beloved wife Nancy
Cup keep all of my estate real and personal
together for the free use and benefit of
herself and my three children herein
named, until my youngest son Francis
Walter Cup shall arrive to his eighteenth year.
In the event my youngest son herein named should
die before he arrives to the above age, I devise my
estate to remain undivided until my oldest
son arrive at his twenty first year— If my
beloved wife Nancy Cup should die before
either of my sons arrive to the age herein specified
it is my desire that my estate shall remain
undivided until they shall have arrived to the
above age." And the Testator by the 4th & 5th
clauses of his says "4th. In the event my beloved
wife Nancy Cup — my three children herein

named should live until my youngest son Francis W. Crop arrives to his eighteenth year, 5th I give and bequeath all of my estate which remains, real and personal to be equally divided between my beloved wife Nancy Crop, - my three children, John D. Crop, Sarah L. Crop, and Francis W. Crop, to them and their heirs forever."

Your Complainant, says, that Francis W. Crop the youngest, of the three children, living at the Testator's death became eighteen years old on the 18th of March 1866. —

That John D. Crop, the oldest son of the Testator died on the day of 1866, under twenty one years of age, never having married and without if he had any issue, and that his interest, in the real estate of the Testator would go to his brothers and sister, the said Sarah L., Francis W, & your Complainant.

That the Testator died possessed of a tract of Land in the Upper Parish of Nansemond County, containing One hundred & twenty five acres, more or less, and adjoins the lands of Henry Jernegan, Uriah Rawls' Est. Wm. Crop's Est. (and others, & that the houses, and fences thereon are greatly decayed, & depreciated, and as it now stands no one of the parties has sufficient interest to improve it, nor is it desirable, or advantageous, to

partition and divide the same, but that the same should be sold, as the interests of all parties would be promoted by such sale.

Your Complainant further states that John W. Darden the Executor named in the Testator's will duly qualified as such in Nansemond County Court on the 12th day of November 1849, as will be seen by a copy of the order of Court granting such qualification endorsed on said will, and that he settled up the said Estate (and turned over the Land and what Chattle estate there was left to the said Nancy, as authorized by said will & that thereafter he died: and that Henry Austin, who afterwards married said Nancy, qualified as admor. de bonis non, with the will annexed of said Benjn. Cuff dec'd. in Nansemond County Court on the 14th day of February 1859, as will be seen by a copy of ~~said~~ the order of Court granting such qualification, on said will, and took charge of the small chattle estate remaining and the Land -

Your Complainant charges, that as no distribution of said Testator's estate has ever taken place, that the same should now be Divided & he be allowed to participate therein, and that he is entitled to one third (deducting value of Dower) of the whole, and that the

remainder should be equally divided between the said Nancy, now wife of Henry Austin, and Sarah L. now wife of Saml. Darden, & Francis W. Crop., according to the Testator's will (the said John D. Crop now being dead).

In consideration whereof and as this Court has jurisdiction to grant all proper relief. To the End therefore your Complainant prays, That Henry Austin and Nancy his wife, and the said Henry Austin adm. de bonis non with the will annexed of Benja. Crop deceased, and Saml. Darden and Sarah L. his wife and Francis W. Crop, the last named one, being under twenty one years of age, may be made defendants hereto, and be compelled to answer the allegations herein. That the said Henry Austin as adm. de bonis non with the annexed of Benja. Crop aforesaid, may be required to render an account of his acts as such. That the rights under said will of your Complainant, and his share of said estate may be ascertained. That the land aforesaid may be sold for distribution and that such other and further relief may be granted, consistent with Equity &c.

John R. Kilby p.q.

Kelly J. V.

Benj^a. W. Crosby J. Pro.

vs. &c. Bill &c

Henry Austin Surfe dal.

Cir. Ct. Nans?

Crofs. Ux: pleas

27th & Chy: Notes

Austin Dep: Sol

1866. July 5th: Sumt: in Chy: issued

" Aug: 6th: Bill &c filed – Conditional decree vs all the defendants except the infant defts: Frances W. Crofs.

" " " Peter B. Prentis appted g.d.n: ad litem to infant defts: who filed his answer to which there was a gen: replin: & cause set for hearing as to them

" Septr: 5th Conditional decree confirmed & cause set for hearing on mo: of Pltffs: Counsel.

" Octo: 13th Decree for accts: 1867. Apl: 19th Contd

1867. Aug: 26th: Report filed. (Oct: 12th) Decree for money &c

1868. Apll: 22d Continued –

" " 25th: Report of Commissioners on division of land filed

" " " Report of payments & Henry Austin's mon: fs: filed

" Octo: 12th: Final decree.

Chy: Notes