1875-021
Nansemond Co. (Suffolk)

Chancery Causes: Henning E. & Robert R. Smith vs Richard Smith

Plat

Will: 1873, James C. Smith, Nansemond Co.

CHANCERY SUMMONS.

The Commonwealth of Virginia,

To the SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Richard Smith

to appear at the Clerk's Office of the Circuit *Court of Nansemond County, at the Rules to be held for the said Court, on the first Monday in* April *next, to answer a Bill in Chancery, exhibited against him in the said Court by*

Henning E. and Ro. R. Smith Ofs division

and)

and have then and there this Summons. Witness, WILLIS E. COHOON, Clerk of our said Court, at his office, this 22 *day of* March *1875, in the* 99th *year of the Commonwealth.*

Teste: W E Cohoon **Clerk of the Court.**

Apr 2nd 76. Executed & copy delivered to R. Smith
J. L. Faulkner Shff

In Nansemond ~~County~~ Circuit Court the June (Special) Term 1875

Hemming E Smith & R R Smith Plf
vs
Richard Smith Dft
} Injunction

This Cause came on this day to be heard on the bill of the Complainants, taken for confessed as to the defendant on whom process and he still failing to appear & make defence had been duly served, and Exhibits filed with the said bill and was argued by Counsel On consideration whereof the Court doth adjudge order and decree that Jones R King Hemming Booth Timothy E Singleton Samuel R Hunter and B P Bolton who are duly appointed Comrs for that purpose any three of whom may act be & they with them a Competent Surveyor if necessary do go upon and proceed to make partition of the following tract of land, into two parts of equal value viz. Of the land of and owned and possessed jointly by said Rob R. & Hemming E Smith the Complainants and Richard Smith the defendant containing 239 acres situated in Nansemond County called by and known by Jones L Smith. and bounded by the lands formerly owned by Moses Cross the late formerly owned by Robt R Smith

and the lands of others, and the Court doth
adjudge order and decree that the said
Comrs after they shall have made said
partition, assign one of said parts to the
said Complainants R. R. & Jemmy E.
Smith and the other to the Defendant, Richd
Smith and make report of their
proceedings hereunder to Court.

A Copy.

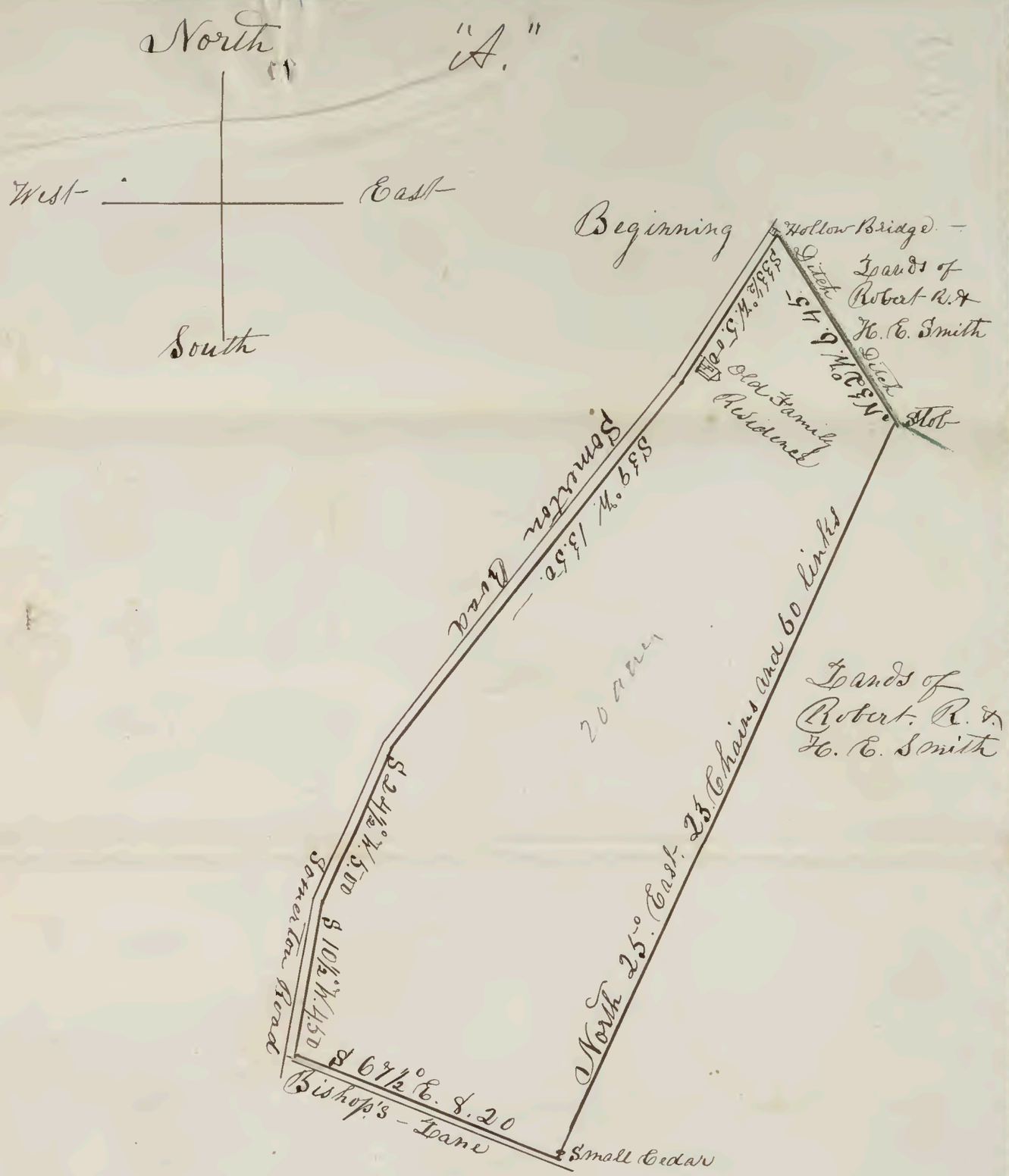
Test: W. E. Lockaby Clk

H. & O. R. R. Smith
vs
Richd Smart

June Term 1875

(Copy)

"A."



The above cut represents the piece of Land on the East side of the Somerton Road that was set aside To Richard B. Smith, by the Commissioners. August 31st 1875. as a part of his portion of the land Where he now lives, as per the Circuit Court Records Beginning at a Hollow Bridge in the Somerton Road — for notes look above. —

Containing 20 Acres —
Plotted 4 Chains to the inch. —
August 31st 1875 —
B. P. Baker Surveyor

(A.)

To the Circuit Court of Nansemond County Va.

The Undersigned, Commissioners appointed by the Decree of said Court, made on the ___ day of June 2nd 1875, in the cause depending in said Court, wherein Henning E. & Wo. R. Smith are plaintiffs & Richard Smith is defendant, respectfully report—

That we met on the premises, on the 31st day of August 1875, and viewed the premises, to wit: the land belonging to the Estate of James C. Smith dec'd, containing 239 acres, more or less and bounded as therein named, That we valued the whole farm at $500.00 That we assigned to the plaintiffs, Henning E. & Wo. R. Smith, the following parcel, containing One hundred and sixty nine acres, more or less. to wit: All that portion of land, ~~that~~ which belongs to said estate, on the East side of the Somerton Road. Except the Buildings and twenty acres of Land. See plat filed herewith

And to Richard B. Smith all that portion lying on the west side of the Somerton Road. and twenty acres of land on the East side including the Buildings containing Seventy acres more or less. See plat of said twenty acres filed herewith and marked "A."

J. R. King
J. E. Langston
Samuel R. Hunter
B. P. Baker

Comm'rs.

Smith &c.

vs

Smith

Report of
Division

Sept'r: 2nd. 1875
Filed
clk.

Cir. Ct. Mont'l Co.

Smith

v.

Smith

This cause came on this day to be heard on the Bill of the Complainants taken for confessed as to the Defendant, on whom process had been duly served, and he still failing to appear and make defence, and on the exhibits filed with said Bill, and was argued by counsel.

On consideration whereof the court doth adjudge, order and decree that James R. King, Henning Booth, Timothy E. Langston, Lemuel R. Hunter, and Beverly P. Baker, who are hereby appointed Commissioners for that purpose, any three of whom may act, taking with them a competent surveyor, if necessary, do go upon and proceed to make partition of the following tract of land into two parts of equal value to wit: of the tract of land owned and possessed jointly by Robert R. and Henning E. Smith, the Complainants, and Richard Smith, the defendant, containing two hundred and thirty nine (239)

acres, situated in Nansemond County lately owned by James C. Smith, and bounded by the land formerly owned by Samuel Crofs, the land formerly owned by Robert R. Smith, and the lands of others. And the Court doth further adjudge order and decree that the said Commissioners, after they shall have made said partition, assign one of said parts to the said Complainants Robert R. and Henning E. Smith, and the other to the defendant Richard Smith and make report of their proceedings hereunder to Court.

Smith
v.
Smith

Nansemond County
Circuit Court
June Term 1875
Decree
To be entered

Exhibits filed with the Bill.

Smith

v.

Smith

WHEREAS, by a decree of the Circuit court of Nansemond county, made ~~on~~ at the May term ~~day of~~ thereof, in the year one thousand eight hundred and seventy-four, in the cause therein pending, wherein Jno R Kilby Executor suing for H E & R R. Smith plaintiff and Wm J Smith's personal representative and als, were defendants, it was decreed and ordered that Wilbur J Kilby (who was appointed commissioner for that purpose), proceed to sell the real estate whereof the said Wm J Smith died seized and possessed, on the terms and conditions named in the decree: And whereas, the said Wilbur J Kilby, commissioner as aforesaid, pursuant to said decree, did advertise the said lands as directed, and did on the 9th day of November 1874, before the court-house door of said county (being court-day), sell at auction as directed the real estate aforesaid, when the following parcel was purchased by Ro. R. and H.E. Smith at the price of two hundred and seventy five dollars ~~and~~ cents ~~that is to say, a tract of land in said county containing~~ that is to say, the one-half interest of which ~~acres, more or less, and bounded as follows~~: the said Wm. J Smith died seised and possessed in an undivided tract of land containing two hundred and thirty nine (239) acres, situated in Cypress Township in said county lately owned by James C Smith, deceased, and bounded by the land formerly owned by Samuel Crosp, the land formerly owned by Ro. R Smith and the lands of others: And whereas ~~and~~ of the purchase money, he, the said R R and H.E. Smith paid in cash the sum of $60.00 and then executed ~~his bond with~~ jointly, their three Bonds. each ~~as security~~ for $71.66 2/3 the deferred payments. And whereas, by a further decree of the said court, made ~~on~~ at the February ~~day of~~ term thereof 1875, in said cause, it was decreed and ordered that the said Wilbur. J. Kilby commissioner as aforesaid,

collect of the said R R Smith and H E Smith, the principal of ~~the said sum of~~ said Bonds and all interest thereon, and make to the said R. R. and H. E. Smith a deed with special warranty, in the usual form, for the real estate aforesaid: And whereas the ~~said sum of money~~ principal of said Bonds, with all interest thereon, has been paid: This deed, therefore, made this 9th day of March one thousand eight hundred and seventy-five, between the said Wilbur J Kilby as commissioner aforesaid, of the one part, and the said R R. and H E Smith of the other part, witnesseth: That the said Wilbur J. Kilby as commissioner aforesaid, in consideration of the said premises, and in execution of the last aforesaid decree, doth grant, with special warranty, unto the said R R and H E. Smith and to ~~his~~ their heirs and assigns forever, the land aforesaid, and its appurtenances.

Witness, the following signature and seal.

Wilbur J Kilby Comr. [SEAL.]

In the clerks office of Nansemond county court
Apl 5th 1875

This deed was this day acknowledged before me in my office by wilbur J Kilby commissioner and thereupon admitted to record.

Copy Teste

W E Cohoon clerk

(Exhibit B)

W. J. Kilby Comr

To } Copy Deed

R R & N. E Smith

Pl. 25

I James C. Smith of the County of Nansemond State of Va do make this my last will and testament, in manner and form following, that is to say.

Item 1st. My will and desire is that all my just debts, funeral expenses &c shall be paid, for which purpose I wish such of my property sold as my beloved wife shall choose, using her own discretion in the selection.

Item 2nd – It is my will and desire that my beloved wife Elizabeth Keep all my Children together untill they shall marry or attain to the age of Twenty one years; to aid her therein I leave her the free and full use of all my Estate both real and personal, with the exception of the tract of Land I purchased of John Odom, my grist Mill, and one feather bed and furniture, my black Mare, bridle and Saddle, and one Negro girl named Esther, and twenty four dollars in cash, which excepted articles of property I give unto my Son Wm J Smith and his heirs forever.

Item 3d – I desire (should my beloved wife marry before my children attain to the age of twenty one years) that all my chattle estate shall be sold with the exception of the Negroes, of which chattle, as well as real estate I leave her the use of one equal third during her life. In case my wife should live until

my youngest child should attain twenty one years of age I desire the above provision shoud be observed

Item 4th My will and desire is that when my Son Richard attains the age of twenty that an equal division shall take place of two thirds of the Negroes left in possession of my Wife, in which he shall ~~draw~~ one equal fourth part, which I give unto him and his heirs forever, the remaining three fourths I desire my wife shoud keep in possession untill my three Small children attain to a like age or marry in which case I desire a similar division shall take place & each one draw as they attain to such age, which respectively I give unto them and their heirs forever—

Item 5th At the death of my beloved wife I give unto my Son James Thomas Smith the land and plantation on which I now live to him and his heirs forever.

Item 6th I give unto my Son Richd Smith the land I bought of Edwd and Wortley Jones (the use of which I leave unto my wife, untill he attains 21 or she Marries as the case may be) which I give unto him and his heirs forever

Item 7th My will and desire is that the death of my wife, my Son Richd shall have an equal fourth part of the remaining one third of my Negroes Not before given away to him and his heirs forever.

Item — 5th — The residue of my Estate of what soever Kind, not herein before given away (at the death of my Wife) I give to be equally divided between my two daughters Lucy Thomas and Diana to them and their heirs forever.

Item — 6th — Should my beloved wife die without marrying or before My Son Richd attains to twenty one years, I wish and desire that an equal division shall take place among all my children of all my Estate, not herein before given away, which I give unto them and their heirs forever

10th — I give unto my Son James Thomas ~~Smith~~ my Violin with Mahogany case with this proviso. that should he die before he attains to 21. I give the Same to my Son Richd with the like proviso, that should he die before arriving to twenty one I give the Same to my Nephew James E. Smith with the Same proviso, that should he die, I wish the Same to be given to the eldest Son of Robt R Smith provided he should have one (if not to the Sd Robt R Smith to him and his heirs forever

Lastly — I do hereby appoint my brothn Washington Smith and my Son Wm I Smith Sole Executors of this my last will and testament, hereby revoking all other and former wills by me at any time heretofore made Signed Sealed published and declared by the said James E Smith as and for his last will and testament who in his presence and at

Jas E. Smith [seal]

Request him subscribed our names as witnesses.

E. Smith. Elizabeth Gooman Dond Parker

At a Monthly Court held for Transcomm County the 1st day of September 1837

This Last will and Testament of James C Smith deceased was proved by the oaths of E Smith and David Parker two of the subscribing witnesses hereto and the said E Smith also proved that he wrote the said will on the 21st day of January 1835 and that it was executed the 28th day of January 1835 and is thereupon ordered to be recorded, and on the motion of William I Smith the surviving Executor herein named who made oath hereto, and with John D Langston, Robert R Smith Admiral Birkley Josiah Dukes, William Hawes Isaac Riddick, and Richard Riddick his Securities who justified entered into and acknowledged a bond in the penalty of Twelve thousand dollars conditioned according to law Certificate is granted him for obtaining probate thereof in due form.

The foregoing will having been recorded since the administrator qualified at last Court, the administration then granted is now revoked and annulled. Teste

John T. Kilby clk.

A Copy Duly Recorded

Teste

John T Kilby clk

A Copy Teste Joseph P Cantus clerk

In the Clerks Office of Transcomm County Court Sept 15th 1874

The foregoing duly authenticated copy of the will of James C Smith deceased. was this day filed in this office and admitted to record.

Teste Willis. E Cohoon

by Teste Willis E Cohoon

Exhibit A.

Exhibit A.

James C Smith's

Will

Copy

$100

Henning E. and Robert R. Smith

vs.

Richard Smith.

This cause came on this day to be again heard on the papers formerly read herein and on the Report of Special Commissioners, J. R. King, T. E. Langston, Lemuel R. Hunter, and B. P. Baker, made in pursuance of a decree of the June (Special) Term of this Court 1875, and was argued by counsel.

On consideration whereof the Court doth confirm the said Report, to which no exception has been filed, and doth adjudge, order and decree that the said Henning E. and Robert R. Smith, plaintiffs take and hold as and for their own, the piece or parcel of land described in said Report as containing one hundred and sixty nine acres, more or less, to wit: all that portion of land late of the estate of James C. Smith deceased on the East side of the Somerton Road except the Buildings and twenty acres of land assigned to Richard Smith as follows.

And the Court doth further adjudge, order and decree that the said Richard Smith, defendant, take and hold as and for his own, all that portion of the land, late of said estate, lying on the West side of the Somerton road, and also the twenty acres of land including the buildings, mentioned above, on the East side of said Road, - all together making seventy acres.

more or less, as described in said Report and the plat with the same.

And the Court doth further adjudge, order and decree that the costs of this suit be borne and paid equally, one half by the said Henning E. and Robert R. Smith, plaintiffs, and one half by the said Richard Smith defendant, and that the proceedings had in this cause be; and they are hereby declared to be, final and binding between the parties thereto; and nothing more remaining to be done in this cause, the Court doth order the same to be removed from the docket of this court.

Smith
vs.
Smith

Amherst County
Circuit Court.
October Term 1875
Final decree
To be entered
Leon Blow

Entered O.B. No-1. p. 290

To Honorable George Blow, Circuit Court Judge for the County of Nansemond, in the State of Virginia:

Complaining respectfully represent and shew unto your Honor, your complainants, Heming E. Smith and Robert R. Smith that on the day of William J. Smith died intestate and possessed and seised, together with his Brother, Richard Smith, of two hundred and thirty nine acres of land, situated in Nansemond County, Virginia, about one mile from Somerton in said County, and adjoining the lands formerly owned by Samuel Cofs, the lands formerly owned by Robert R. Smith, and by the lands of others; that the said real estate was devised by James C. Smith to Elizabeth Smith, his widow, for her lifetime and then in fee to the said William J., and Richard Smith, his sons, who came into possession of the same after the death of said widow, - a certified copy of the will of said James C. Smith, whereby the said devise was made, being filed herewith as part of this Bill and marked "Exhibit A"; that under proceedings had in the Circuit Court of said County in the Chancery cause of John

R. Kilby, Executor of Sarah J. Elliotts es-
tate, suing for the benefit of Heming E.
and Robert R. Smith, and others, as plain-
tiff, against the Personal Representative of
William J. Smith deceased, and others,
as defendants, Your Complainants pur-
chased at public auction on the 9th. day
of November 1874, the one-half interest
of which the said William J. Smith
died seized and possessed in the
said undivided tract of land;
that on the 9th. day of March 1875, Your
Complainants received a deed for said
one-half interest in said undivided tract
of land, from Commissioner, Wilbur J.
Kilby, in pursuance of further proceed-
ings had in said cause, whereby Your
Complainants became joint-owners of
said tract of land with said Richard
Smith, — a partition of which land
Your Complainants now desire; ref-
erence to said proceedings in said cause
being here made, and a certified copy
of said deed being herewith filed as
part of this Bill and marked "Exhibit B."

In consideration whereof, Your Com-
plainants, being without remedy save in
a Court of Equity, pray that the said
Richard Smith may be made a party

defendant to this Bill and be required to answer, on oath, all the allegations contained in the same; that the said tract of land may be partitioned, or divided into two parts of equal value and one of said parts be assigned to Your Complainants to be possessed, held, and owned by them as and for their own by virtue of their said deed; that proper parties, Commissioners, may be appointed to make said partition or division; and that all other and adequate relief may be granted consistent with equity. And as in duty bound, Your Complainants will ever pray etc.

John R. Kilby Son & Co.

Henning E. & Ro. R. Smith

v. } Bill

Richard ~~F~~ " F Smith.

In the Circuit Court of Nansemond County

N. & O. Ro. R. Smith Plff.
v
Richd Smith Defts } In Chancery

Notes of Proceedings

1875 March 22nd. Procs issued to April Rules 1875

1875 April Rules. Bill filed & decree nisi

1875 May Rules, Bill t.c. & cause set for hearing
" June Term Decree for partition
" Septr. 2 Report filed
" Octr. Term. Final Decree

37
2,22

City Notes