

1881-014
Nansemond Co. (Suffolk)

Chancery Causes: Cutchin & Lewis vs Admro of Eley Austin et al

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *William N. Austin,*
Jacob Austin ~~and~~ ~~Austin~~ *and John L. Fulgham,*
(Sheriff and Adminr of the estate of Eley Austin, dec'd)

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 *March* next, to answer a

Bill in Chancery, exhibited against *them*

in the said Court by *Joel H. Cutchen and Lewis,* late
merchants and partners, trading under the firm-name
and style of *Cutchen & Lewis,* who sue for themselves
and all other creditors of *Eley Austin* deceased who
may make themselves parties hereto on the usual terms.

and have then and there this Summons. Witness, *PETER B. PRENTIS,* Clerk of our said
Court, at his office, this *27th* day of *February* 1879, in the *103rd*
year of the Commonwealth.

Teste:

Peter B. Prentis Clerk.

Exacted copy of the within delivered Jacob Austin & Allen
Henry Austin

J. H. Fulgham Shff

I have by acknowledgment service of sum —

J. H. Fulgham, Shff.

Pro: B. No 1 large 129
City: Co.

^{Causey, S. J.}
Outehio & Lewis, who
sue for.

Sum^s in Chy

William H. Austin Lat.
To March Rules, 1879

Commissioner's Office,

SUFFOLK, NANSEMOND COUNTY, VA.

July 10th 1879

To Joel H. Cutcher and Lewis late merchants
and partners, trading under the firm name and
style of Cutcher & Lewis, who sue for themselves and
all other creditors of Ely Austin dec'd who may make
themselves parties here to on the usual
terms Plaintiffs,
and

William H. Austin, Jacob Austin and John
L. Fulghum, Sheriff and Admin'r of the estate
of Ely Austin dec'd Defendants.

You are hereby notified that I have fixed upon the 10th day of August - (1879)
next, to take and settle, at my office, the following accounts, to-wit:

1st An Account of the trans actions of John L.
Fulghum Sheriff & Admin'r of Ely Austin dec'd

2nd An Account of all debts due by said Ely Austin
deceased or his estate according to their dignity
and priority

3rd An Account of the fee simple and an-
nual value of the real estate of which said
Ely Austin died seized and possessed

required to be taken by the decree of Nansemond Court, rendered on the
day of April 1879 in a suit in Chancery depending in
said Court, in which you are parties, plaintiffs and defendants; at which time and place you
are required to attend.

Given under my hand as Commissioner in Chancery of the said Court, the day and year
first aforesaid.

Peter B. Pantis.
Commissioner in Chy.

Know all Men by these Presents,

That we, *L. H. Causey and J. C. Causey*

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA, in the just and full sum of *One hundred and fifty* Dollars, to the payment whereof, well and truly to be made to the said Commonwealth, we bind ourselves, and each of us, our, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this *3rd* day of *January* in the year one thousand eight hundred and *eighty-*, and in the *10th* year of the Commonwealth. And we hereby waive our Homestead exemption, as to this obligation.

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bound

L. H. Causey

who has ~~by this day qualified before the~~ a Decree of the Circuit Court of Nansemond County. pronounced on the day of October, 1879, in the Chancery cause of *Cutcher & Lewis vs. Eliza Austins Adm'r*, been appointed special commissioner to sell the land in the proceedings mentioned, shall faithfully discharge this duty as such under said decree and all other decrees he may be required to execute in said cause.

~~shall faithfully discharge the duties of his said trust~~, then the above obligation to be void, or else to remain in full force and virtue.

Executed in
presence of }

Peter B. Prentiss, Clerk

C. H. Causey (Seal.)
J. C. Causey (Seal.)
(Seal.)
(Seal.)
(Seal.)

L. H. Causey
S. J. Comm. Bond
Commonwealth

1888
January 5th. Executed &
filed.



Fiske & Brother, Printers.

~~March 21st 1876~~

March 21st 1876

On Demand Days after date I promise to pay unto
J. P. Homan his heirs, administrators or assigns,
without offset, Twenty Dollars, 20 Dollars,
100

for value received; and it is agreed upon by the parties that the interest on this Note shall
be at the rate of 6 per centum per annum, payable in advance; and ~~he~~, maker and
endorser, hereby waive the benefit of any Homestead Exemptions as to this debt.

Credit the maker.

Witness R. R. Butler } E. J. Austin (Seal)
March

Copy of Austin Note

1820

since March 21/18

On demand I promise to pay unto Cutcher Lewis
the sum of seventeen dollars and twenty three
cents & being for value received and
I hereby waive my "homestead Exemption"
as to this debt. Witness my hand and seal
this 19th day of January 1872
Witness.

~~Alley~~ ^{his} Austin
mark

Seal

R. H. Cobb

Ely Austin

August 12th 1878

Recd of Sheriff One dollar for the appraisement of Ely Austin Estate

E. J. Corp.

August 12th 1878

Recd. of Sheriff One dollars for Elijah Jones for the appraisement of Ely Austin Estate.

E. J. Corp

July 20th 78

Eley Austins test-
To J L Rawles Dr
Halling of Property to
Hollands Corner
2 loads 75ct. \$ 1.50

Real payment

J L Rawles

$$\begin{array}{r}
 123 \\
 \underline{100} \\
 2123 \\
 \underline{615} \\
 1508
 \end{array}$$

$$\begin{array}{r}
 12915 \\
 \underline{7500} \\
 5415
 \end{array}$$

$$\begin{array}{r}
 5415 \\
 \underline{1000} \\
 4415
 \end{array}$$

252

252

Jan 15th / 1878

Est- of Ealy Auburn

To D B Jones &c

To digging grave for Deceased \$ 1.00

July 20 Paid in full D. B. Jones

Eley, Austin
 1876 To J. H. Holland
 May 21st 1 lb. Lard 12
 " " Fish 15
 " " Bacon &c 3 54 \$ 3.81
 " 26 Credit by returned jug 210
 June 1 3 41

Eley, Austin
 1878 To J. H. Holland
 Jan'y 14th (for Burying) Vest &c \$ 3.32

Ely Austin

3.32 long

10.29

1861

1876. Nov.

Ely Austin

Dr.

" " To John S. Rawls for amt. of a note paid Mr. H. Holland \$7.83

" Dec. To attention and Board six month at \$5.00 per month \$30.00

1877 December For attention and Board 12 month at \$6.00 per month \$72.00
\$107.83

I personally appeared before ^{me.} John S. Rawls,
and made oath to the correctness of the
above account. Given under my hand
this 8th day of Feb. 1878.
J. H. D. Daugherty J. P.

1878

Jan 15 Est of Ealy Austin
T. R. & Hall & Co

To make Coffin and Case
Lining stl'd Cord Manganese
Hearse & Horse for Decade \$26.00

Cred. by Cust. 2.00

3.00
\$ 22.00

July 20 By Goods bought by Hall & J. L. Rouse
at Sale of Austin

17.64
\$ 4.36

Suit 4 sec hand
with 1/2 doz shoes new
E. J. Crofts.

Eley Austin decd
Papers

To the Circuit Court of Henric County,
Virginia:

Pursuant to a decree of
said Court, pronounced at the October
Term, 1879, in a cause in chancery there
in depending between Cutcher & Lewis
Plaintiffs and Eley Austin's Admin^r
def^t, a copy of said decree being here-
unto annexed, the undersigned, having
been appointed special Commissioner
for certain purposes named in said
decree, respectfully reports to Court
his action as follows:

That after first executing his bond
before the Clerk of this Court in the
penalty therein specified you com-
missioner of sale proceeded to adver-
tise the said lands in the proceedings
mentioned and therein described as
a small parcel of land "containing
22 acres, more or less, situated in
Henric County, and adjoin-
ing the lands of John Hanel's estate
and William Jones and being without
improvement and of the estimated value
of \$60", for the period prescribed in
in the decree and on Monday the
day of 1880, being County

Court day did expire the same before the Court-house door of said County aforesaid, for sale, to the highest bidder in accordance with the terms prescribed in said decree, when Dempsey Hare became the highest bidder and purchaser of said land for the sum of \$

And your Commission further reports that although the decree above mentioned directed the said land to be sold on a credit as therein stated, yet the said purchaser having elected to pay the full amount in cash he has received the same and disposed of it in paying to the several parties entitled thereto the amounts as per receipts severally enclosed on the copy of the annexed decree will show - and the amount received by your Commission having been fully paid out, and there ~~being~~ ^{and} no further assets to come into his hands - as the following statement will show

By Amount for which land sold	\$45 ⁰⁰ / ₁₀₀
To Clk of Court	\$7.50 paid P.B.P.
" Shff.	" 1.00 paid
" Atty & Fay	" 16.50 - G.H.C. atty
" Commr	" 5.00 paid P.B.P.
" paid G.Hearsey atty	15.00
	\$45 ⁰⁰ / ₁₀₀

Wichita & Leavenworth
is J. Chay
Austin & Adams

Born's report of

2nd &c

1880 - Sept: 10th;

To the Circuit Court of Hanover
County, Virginia

Pursuant to a decree
of the Circuit Court of Hanover County
pronounced at the April Term, 1879 in
a cause in chancery therein depending
between Cutler & Lewis and all other
creditors of Ely Austin, plaintiffs and
Said Ely Austin Defendant, a copy of
said decree being herewith annexed, the
undersigned, a Commissioner of said Court,
having given notice to the parties to the
said cause, a copy of said notice being
hereto annexed, did proceed to take, state
and settle at his office the several
accounts required by said decree to be
stated and having completed his work,
herein respectfully submits the result
hereunder written, as follows

Account No. 1

An account of the transaction of John L.
Fulgham Sheriff and Adminr of Ely Austin
Deceased

1878 July 20
C

By proceeds of the chattel estate of said
deceased as per acct: Sales recorded \$19,45

Account No. 2.

An account of the debts due by said Ely
Austin deceased or his estate according to

to their dignity and priority

To Ketchum & Lewis a bond for	\$ 17	23
" interest on same from Jan'y 19th: 1872	8	06
" J. J. Holland a bond for	6	20
" interest on same from March 21st: 1876	1	30
" R. C. Hall an open acct of	4	36
" John L. Rawls do do do	107	83
" J. J. Holland " " "	6	23

Making a Total of \$151 71
All the above debts are of equal dignity

Account No. 3

An Account of the fee simple and annual value of the real estate of which said Eley Austin died seized and possessed

Your Commissioner states under this head that the deceased died seized and possessed of a small tract of land in Hanover County Virginia containing ^{two} twenty (22) acres more or less and of the estimated value of \$ 60 00

and the annual value is not more than \$ 5 00

All of which is respectfully submitted the 11th: of September 1879.

Peter B. Prentiss.
Comptroller in Chg

Comis fees \$5.00

Cutler & Lewis

to J. M. Chey

By Austin Adams
val

Report of Debts

to

1879

Sept. 11th.

At a Circuit Court continued and held for
Chauvenot County the 12th day of April 1879.

Joel H. Leitchin and Lewis
late merchants and partners, tra-
ding under the firm name and style
of Leitchin & Lewis, who sue for
themselves and all other creditors of
Eley Austin dec'd, who may make
themselves parties hereto on the
usual terms Plaintiffs

Against { In Chancery
William H. Austin, and Jacob
Austin and John L. Fulgham
(Sheriff and Adm'r of the Es-
tate of Eley Austin dec'd). Defendants

This cause came
on this day to be heard on the Bill of the
Complainants taken for confessed as to the
Defendants thereto (all adults) on whom
process had been duly served, and they
still failing to appear and plead, answer
and demur thereto, and on exhibits filed
and was argued by counsel.

On consideration whereof the Court
doth adjudge, order and decree Ist: That
a Com'r of this Court take and state an ac-
count of the transactions of John L. Fulgham
Sheriff and Adm'r of the Estate of E-
ley Austin dec'd 2nd: That said Com'r

shall also take and state for the further information of this Court an account of all debts due by the said decedent or his Estate, their dignity and priority. And: That said Court shall render an account of the lands of which Eley Austin died seized and possessed: the fee-simple and annual values of the same and whether in his judgment a sale will be necessary, together with any other matter specially stated deemed pertinent by himself or that any of the parties may require to be so stated. And make report to Court of his proceedings under this decree.

A copy

Teste,

Peter B. Prentiss. Clerk.

J. H. Custer vs
vs } Copy of Decree
april Term 1899
Eley Austin

At a Circuit Court, continued and held for Nausamund
County, the 16th. day of October, 1879:

Cutcher & Lewis & Co. . . . Plaintiffs.

against E. J. Chauncy.

Eley Austin Adm'r. Lel. . . . Defendants.

This Cause came on this day to be again heard on the
papers formerly read therein, and on the Report of Com-
missioner, Peter B. Prentiss, made in this Cause, pursuant
to a Decree of this Court, pronounced at the April Term,
1879, and was argued by Counsel:

On consideration whereof the Court doth confirm said
Report, to which no exceptions have been filed, and doth
adjudge, order and decree, that C. H. Causey, who is hereby
appointed Special Commissioner for that purpose, pro-
ceed to sell, at Public Auction, before the Court House Door
of Nausamund County, on some Court day, the Real Estate
of which said Eley Austin, died seized and possessed, described
as small piece or parcel of land, situated in Holy
Neck District, in Nausamund County, containing 22 acres
more or less, and adjoining the lands of John Harrell's
Estate and William Jones.

And the Court doth further adjudge, order and decree, that said
Special Commissioner, before proceeding to sell said Real
Estate, advertise the time and place of sale, by printed
hand-bills, posted at the Court House Door of said County,
for at least twenty days before sale; and that said
Commissioner sell said land on a credit of one and
two years, except for cash enough, to pay costs of suit and
expenses of sale, and take from the purchaser, bonds

with good security, in evidence of the deferred payments to be made, one and two years from date thereof, and that said Commissioner retain the title to said land, until the further order of the Court, and make report to Court of his proceedings, ~~extra~~ under this decree.

But said Commissioner, before he proceeds to sell said land, in pursuance hereof, shall execute before the Clerk of this Court, in his Office, a bond in the penalty of One Hundred and fifty dollars with good security, payable to the Commonwealth of Virginia, and conditioned for the faithful execution of this decree and all other decrees he may be required to execute in this Cause.

A Copy:

Teste:

Peter B. Painter, Clerk.

Costs

Clerk \$10.00

Attorney 31.50

Shff. 1.00

Commer^{ts} 5.00

\$47.50

Cutcher Lewis L
2^d } Copy Decm Octo Term
1879-
Eley Austin's admn. L

Butcher & Lewis

Plffs

vs J Chas

Ely Austins Admors

Defts

This cause came on this day to be again heard on the papers formerly read therein and on the report of Court^r Peter B. Prentiss, made in this cause pursuant to a decree of this Court pronounced at the April Term 1879, and was argued by counsel

On consideration whereof the Court doth confirm said report, to which no exceptions have been filed, and doth adjudge, order and decree that C. H. Causey, who is hereby appointed special Court^r, for that purpose, proceed to sell at public auction before the Court house door of Hanseman County, on some Court day, the real estate of which said Ely Austin died seized and possessed, described as a small piece or parcel of land situated in Holy Neck district, in Hanseman County containing 92 acres, more or less and adjoining the lands of John Hamrell's Estate and William Jones,

And the Court doth further adjudge, order and decree that said special Court^r, before proceeding to sell said real estate, advertise the time and place of sale by printed handbills posted at the Court House door of said County for at least twenty-days before sale

And that said Court, sell said land on a credit of one and two years, except it for cash enough to pay cost of suit and expenses of sale. And take from the purchaser bonds with good security in evidence of the deferred payments to be made one and two years from date thereof, and that said Court, retain the title to said land until the further order of the Court, and make report to Court of his proceedings under this decree.

But said Court before he proceeds to sell said land in pursuance hereof shall execute before the Clerk of this Court in his office a Bond in the penalty of One hundred and fifty-dollars with good security payable to the Commonwealth of Virginia and conditioned for the faithful execution of this decree and all other decrees he may be required to execute in this cause.

Cutcher & Lewis

is of Chr

Ely Arthur's

Octo 1879 16th

Rough Decree to
be entered

Geo. V. Wood.

Copied

Entered O.B. No-1

p. 462

Butcher & Lewis

Plffs

vs J Ch

Eley Austin's Adm^r vs Defts

This cause came on this day to be heard on the "Bill" of the Complainants Taken for confessed as to the defendants thereto: (all adults) on whom process had been duly served, and they still failing to appear and plead, answer and demur thereto. and on "Exhibits" filed and was argued by Counsel.

On consideration whereof the Court doth adjudge, order and decree

- 1: That a Comm^r of this Court take and ~~an account of~~ state the transactions of John L. Fulgham, Sheriff, as Adm^r of the estate of Eley Austin dec^d.
- 2: That said Comm^r shall also take and state for the further information of this Court an account of all debts due by said decedent or his estate, their dignity and priority.
- 3: That said Comm^r shall render an account of the lands of which Eley Austin died seized and possessed, the fee simple and annual value of the same. and whether in his judgment a sale will be necessary. Together with any other matter specially stated, deemed pertinent by himself. or that any of the parties may require to be so stated, and make report to Court of his proceedings

Leitchin & Lewis
to John ch. Rough Secue
Oley Austin's Adm^{ts}

1829
April 12th Secue —
Secue to be entered.

Leitchin & Lewis.

Entered O.B. No 1 -
P. 443

under this Secue

Leitch v Lewis

Plffs

vs & ch

Austin's Adm^{tr} & al

Defts.

This cause came on this day to be again heard on the papers formerly read herein, and on the report of sale of Spl. Court, L. H. Leawey, made under a decree in this cause at the October Term 1879, of this Court, and was argued by counsel.

On consideration whereof the Court doth confirm the report of sale and payments, no exceptions having been filed thereto, and doth adjudge, order and decree that said Spl. Court, do proceed to make unto the purchaser of the land in these proceedings mentioned, a deed with special warranty in the usual form.

And nothing further remaining to be done in this ^{cause}, it is ordered that the same be removed from the docket.

Leitchin & Lewis

$\frac{4}{18}$

Austin's Adm'n

1881

April Term

Rough decree

To be entered

Geo. Wilson,

Final

Entered O. B. No 1 -

- 12,378

In the Circuit Court of Hansemond County.

To The Hon^{ble} George Blow, Judge of said Court.

Humbly complaining, sheweth unto your honor, your orators Joel H. Cutchin and Lewis, late merchants and partners, trading under the name and all other credit of Eley Austin effect^{ly} and style of Cutchin & Lewis, respectfully represent to the Court and say that Eley Austin died on the day of , 187, unmarried and without issue, leaving neither father nor mother, but leaving two brothers, William A. Austin and Jacob Austin. That the said Eley Austin dec^d. left very little personal Estate, there being scarcely enough to defray his funeral expenses, but he died seized and possessed of certain real estate, to wit: a small tract of land lying and being in Hansemond County, Virginia, adjoining the lands of John Harrells Est. ~~John H. Bickelick & Virginia Est.~~ and William Jones, and containing 22 acres, more or less and being of the estimated value of Sixty dollars. That the deceased died indebted to to your Orators in the sum of \$17.²³/₁₀₀, due by bond dated the 19th day of January, 1872, payable on demand, no part of which has been ^{amounting to more than one hundred dollars} paid, and to several other parties in various sums.

Your complainant further states that on the day of , 1878, the estate of said Eley Austin was committed to the hands of John L. Fulgham Sheriff of Hansemond County for ad-

ministration according to law as will appear by the order of
Hammond County Court made at the Term 1878,
herewith filed and marked "Exhibit" A. That it will be
necessary to sell the said land to pay your complain-
ants, the same being of little value, that there are
no improvements of value on the said land and
it is believed the same will not sell for enough
to pay the said debts of said deceased due your com-
plainants.

On Tender Consideration whereof,
forasmuch as your complainant is remedy-
less in the premises, save by the aid of a Court
of Equity, where matters of this kind are alone and
properly cognizable, your complainants pray
that the said parties who have been duly sum-
moned as parties defendant in this suit, to wit
John L. Fulgham, Sheriff and Administrator of Eley Aus-
tin dec'd, William H. Austin and Jacob Austin
be made defendants to this Bill and that they be
required to answer the same upon oath the alle-
gations contained therein: That the accounts of said
John L. Fulgham, as personal representative of Eley
Austin dec'd may be settled, that the debts due
by said dec'd may be ascertained & stated: That
the heirs at law of said dec'd may, if necessary,
be ascertained, that the fee simple and annual
value be also ascertained and that, if required,
the same may be sold to pay the debts found

to be due by said deced., or his estate, and the
surplus if any divided among the heirs of
said deced. And that your Honor will
grant your complainants such further and
general relief as may be consistent with equity
and the case requires.

And your complainants will ever pray &c.

Curtis & Lewis

by C. H. Causey Atty &c

C. N. Canoy by
Cutler & Lewis del
18 of In Chy—

Eley Austin Adm't

"Bill"

Cutcheon & Lewis, who sue &c

vs { Chy: Ndes

William H. Austin Lat

1879. Feby: 27th: Sum: in Chy. issued to March Rules, 1879

" March 3rd: Bill &c filed - Decree nisi ^{vs} depts

" April 7th: Decree nisi confirmed & cause set for
hearing on mo: of Pltffs' Counsel

" " 12th: Decree for accos:

" Ltr: 11th: Report filed

" Octo: 16th: Decree for Sale &

1880. Apr: 14th: Continued

Chy. Notes