1889-003
Nansemond Co. (Suffolk) Chancery Causes: S.R. Dunn et al vs John T. Kilby et al

Smith, Hall, Ames, Benn

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Jno. T. Kilby, Jno. W. Ames, Trustee, Nancy Riddick Smith and Jno C Smith. Mary Benn Kilby and Lelia Lee Kilby, who is an infant under the age of twenty one years.

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~~ third *Monday in* July 1888 ~~next~~, *to answer* ~~a Bill in Chancery, exhibited against them in the said Court by~~ S. R. Dunn and Florence Hayden Dunn

and have then and there this summons.

Witness, PETER B. PRENTIS, Clerk of our said Court, at his office, this 3rd *day of* July *1888, in the* 112th *year of the Commonwealth.*

Teste:

Peter B. Prentis *Clerk.*

I have this the 9th day of July 1888. Served a copy of
This precep in writing upon the within named
John T. Kelly, John W Ames, Tinslee, Nancy Riddick Smith.
John C Smith, and Mary Benn Kelly

Wm H Howell
Shff-

E. E. Holland D.S.

S. R. Mann and Attorney
Hayden Mann

vs

Summons in Ply.

Jno. T. Kelly et als:

To 3rd. Monday in July. 1888

Cir. Ct.

At Rules held in the Clerk's Office of the Circuit Court of Nansemond County, Va. on the 16th. day of July, 1888.

S R Dunn and Florence Hayden Dunn . . . . . Complainants.

vs. In Chancery

John J. Kelly, John W. Ames, Trustee; Nancy Riddick Smith and Jno. C. Smith; Mary Benn Kelly and Lelia Lee Kelly, who is an infant under the age of twenty-one years. . . . . Defendants.

On the Motion of the Complainants, by Counsel, Wilbur J. Kelly, Attorney at Law, is appointed guardian to the defendant, Lelia Lee Kelly, who is an infant under the age of twenty-one years, to defend her in this suit.

Peter B. Scuder
Clerk of the Circuit Court of Nansemond County.

S. R. Dunn, and Florence
Hayden Dunn

vs

E. Eby

John J. Kilby, Sheriff

Order appointing
guardian ad litem
for the infant defendant

Drum & als
vs In Chancery
Kelly & als

This Cause came on this day to be heard upon the notice required by law having been given the parties the bill taken for Confessed as to all the defendants except Jno. D. Kelly the answer of said Jno. D. Kelly the answer of the infant defendant by Rob't Kelly & R. Lewis. her guardian ad litem and the answer of the said infant defendant being over the age of fourteen years with replication thereto and was argued by Counsel: On Consideration whereof the Court doth order, adjudge and decree that E. B. Britt, Thos. W. Smith, C. W. Wright, L. D. Amos and W. J. Lee who are hereby appointed Commissioners for the purpose, any three of whom may act, having first been duly sworn, do proceed to lay off and divide the real estate of Mary H. Kelly, dec'd and seized and possessed consisting of two lots of land in the Town of Suffolk Virginia and one tract of land in Nansemond County and an interest in a certain other tract of land, subject to the dower interest of Mary Benn therein also in said County, all of which is fully described in the bill in this cause, reference to which for a fuller description of same is hereby made, into four equal parts having regard to quality and quantity and assign one of said parts to the following children of said Mary H. Kelly dec'd. Viz: to Mamie Riddick Smith, the wife of J. C. Smith, one fourth part, to Florence Hayden Drum, the wife of W. R.

Dunn, one fourth part. To Mary Bunn Kelly one fourth part, and to Lelia Lee Kelly, one fourth part. But if the said Commissioners should find it impracticable to Divide the said Land among the aforesaid parties, or should be of opinion that the interest of the said parties would be more promoted by a sale of the same, in such case they are required to report the facts upon which their opinion is based to the Court, and also what in their opinion is the fee simple value of all the Real Estate of which said Mary H. Kelly died seized and possessed: And in either case they are required to report their proceedings under this Order to Court.

C. M. Shell

To R. B. Prentis.

Clerk of the Circuit Court of Nansemond County.

Decree.

Sept: 4th. 1888

Entered — Chy: order
Book 4 Cir: Co: No 2
Page 210.

Notice of this decree
to be entered in vaca-
tion is hereby accepted
Wilbur J. Kirby
Sol. ad litem

Dunnoals,

vs In Chancery.

Kilpatricks,

The objects of this suit having been accomplished by private arrangement between the parties thereto, and the costs of suit having been paid, on motion of plaintiff, by attorney, and with consent of all parties, it is ordered that same be removed from the docket.

Dunnoals
vs McChaney
Kingsdale

Oct 15th 1889
To be entered.

Entered Chaney
order Book
No: 2 p. 300.

In the Circuit Court of Nansemond County, Va.

Dunn & wife
vs.
Kilby & al. } In Chancery

The answer of Lelia Lee Kilby an infant under the age of twenty-one years by Wilbur J. Kilby her guardian ad litem appointed to defend her in this suit, to the Bill of Complaint, exhibited against her and others in the Circuit Court for the County of Nansemond by Sydney R. Dunn and Florence H. his wife.

This Respondent reserving to herself the benefit of all just exceptions to said Bill, for answer thereto, by her said guardian ad litem, says,

That the facts stated in said Bill may be true, but being an infant of tender years and by reason of her infancy incapable of understanding or taking care of her rights and interests, she by her said

guardian commits herself and her interests and rights to the protection of the Court and prays that no decree may be pronounced to her prejudice or against her interest in this suit.

And this Respondent hereby gives notice that the Court will be asked to allow her said guardian reasonable compensation to be paid out of the estate of this Respondent under the control of the Court in this suit, for his services.

And having answered this Respondent prays to be hence dismissed with her reasonable costs in this behalf expended and she will ever pray etc.

Lelia Lee Kilby
By Wilbur J. Kilby
her guardian ad litem

16 July 1888

Dunn & wife

vs. } In Chy.

Kelby & al.

Answer of the infant defendant by her guardian ad litem.

The Answer of Jno. T. Kelly to bill of
Complaint Exhibited against himself
and Others in the Circuit Court of Isle
of Wood County by J. R. Dunn & Others.
This respondent answers and says: that
he submits his rights in the matters re-
ferred to in said bill to the Court and
is willing for the Court to determine in
what parts of the real estate mentioned
in said bill, all or none, he can claim
his right of Curtesy. And if the Court shall
decide that he is entitled to Curtesy in
any or all of said real estate, then this
respondent says that he is willing to
commute the same, and accept in
lieu thereof a certain amount of the
proceeds of sale to which under the
law he may be entitled.
And now having fully answered he pray
hence to be dismissed with his costs &c.

J. T. Kelly

Subscribed and sworn to before me
the undersigned, a Notary Public for
the County of Nansemond, the State of
Virginia this the 3rd day of September
A.D. 1888.

E. E. Norcum
N.P.

Answer of Jno.
T. Kilby

The answer of Lelia Lee Kelly, an infant defendant over the age of fourteen years, to a bill in Equity Exhibited against her and others in the Circuit Court of Nansemond County by S R Dunn and others.

For answer to the said bill the said Lelia Lee Kelly answers and says that she believes, although under full age, she knows what are her interests in the matters referred to in the bill; she believes the statements in said bill are true, and that it will be to her advantage in case said real estate cannot be divided in kind, to sell the same as therein prayed for and invest the proceeds of sale as the law directs. And now having fully answered she prays to be hence dismissed &c

Virginia
Nansemond County, to wit
This day personally appeared before me the undersigned a Notary public for said County in said State, Lelia Lee Kelly, and made oath that she believes the statements made in the foregoing answer are true.
Given under my hand this 3rd day of Sept. 1888

E. E. Holland N.P.

Answer of

Lelia Lee Kelly

Infant defendant.

In the name of God Amen!
I, Mary H. Kilby of the Town of Suffolk, Virginia do make this my last will and testament, as follows, As to such worldly estate as I may die seized and possessed of I dispose of the same after the payment therefrom of all my just debts as follows:-
1. I devise and bequeath unto my four daughters Nancy Riddick Kilby, Mary Penn Kilby, Florence Hayden Kilby, and Delia Lee Kilby Shaw and share alike all my real estate wheresoever situate with the appurtenances belonging to the same
2. I devise and bequeath unto my said four daughters share and share alike all my personal property of every kind and description wheresoever situate
3. I hereby revoke all previous wills and codicils heretofore made by me.
Witness my hand this 27th day of July A.D. 1887
Mary H. Kilby

Signed and published by Mary H. Kilby as and for her last will and testament in the presence of us who in her presence and in the presence of each other have hereunto subscribed our names as witnesses.
Witnesses:
Maggie T. Kilby
Anna M. Riddick
John B. Pinner

At a monthly Court held for Nansemond County, the 8th. day of August, 1887.
This Last Will and Testament of Mary H. Kilby

late of this County, deceased, was this day fully proved by the oaths of Anna M. Riddick and John B. Penner, two of the subscribing witnesses thereto; and was thereupon ordered to be recorded.

Teste:

Peter B. Prentis. Clerk

At a monthly Court held for Nansemond County, the 12th. day of September, 1887.

On the motion of Nancy R. Kilby, who made oath as the law directs, and entered into a bond in the penalty of two Thousand dollars, conditioned according to law with John T. Griffin, her surety therein (who justified on oath as to his sufficiency, and which said bond being acknowledged by the obligors therein is ordered to be recorded) Certificate is granted the said Nancy R. Kilby for obtaining letters of administration on the Estate of Mary R. Kilby deceased, with her will annexed, in due form.

Teste:

Peter B. Prentis Clerk

A Copy,

Teste:

Peter B. Prentis. Clerk.

xmd

Mary H. Kelby's
Will
(a Copy)

Exhibit "D"

Whereas on the 23d day of December in the year 1857 a marriage was duly had & solemnized by and between Dr John T. Kilby and Mary N. Benn of Nansemond County Virginia and whereas previously to said marriage, a Deed of Marriage Contract and settlement was duly entered into and executed and which was duly recorded in the Clerks Office of Nansemond County and whereas on the 6th day of February 1866 the Clerks Office of Nansemond County was burnt & all the records therein, including the said original marriage contract & agreement & the record contract also: And whereas it is deemed advisable to place on record the evidence of the terms and conditions of said Deed: This writing is now made. This Deed made this 26th day of August 1871, between the said John T. Kilby and Mary his wife of the one part, and John W. Ames the trustee in said original contract of the other part Witnesseth that in order to make a record of the facts above stated, & to set forth the terms & conditions of said original contract, the said John T. Kilby any Mary his wife do grant as of the date first above named, unto the said John W. Ames trustee as aforesaid, the following estate, then and now owned by said Mary, to wit: Thirty acres of land, including one room in the dwelling house, part of the land of Thomas Benn deceased father of Mary, as laid off and assigned to her in the division of

the said land - which farm is situated on the right bank of Nansemond River and adjoining the lands of John S. Wright The Jordan Farm and Carneys Creek also certain ~~slaves~~ slaves, To be held by ~~said~~ John W. Ames (as in said original contract provided) for the sole and seperate use, benefit and behoof of the said Mary; ~~with power to said Mary~~ the income & Rents therefrom to be taken and Received by the said Mary; with powers to said Mary by Deed executed as Deeds are by law required to be executed with the consent of Said Trustee (John W. Ames) to sell the said lands or any part thereof, and all other estate hereby conveyed to whomsoever she may think proper and to dispose of the same as she may think proper: and with power to said Mary to dispose of said property or any part thereof by will executed as other wills are, And if no disposition by Deed or will, then the same at her death to pass to the children of said Mary,

and the said John T. Kilby covenants that all the rights and powers reserved to said Mary may be exercised & enjoyed by her at her will & pleasure, with out any hindrance from him.

Witness the following signatures and seals

John T. Kilby (seal)

Mary F. Kilby (seal)

State of Virginia
Tazewell County, To wit

I, John R. Kilby a Notary Public in and for said County in the State of Virginia do certify that John T. Kilby, as party to the foregoing writing bearing date the 26th day of August 1871, has personally appeared before me in said County & acknowledged the same to be his act and deed, and I further certify that Mary H. Kilby, the wife of John T. Kilby also a party to said writing also appeared before me in said County & being examined by me privily and apart from her said husband having the said writing fully explained to her she the said Mary H. Acknowledged to same to be her act and deed and declared that she did not wish to retrack it.

Given under my hand this 28th day of August 1871

John R. Kilby
Notary Public

In the Clerks Office of Tazewell County court the 28th day of August 1871. This deed was presented and upon the certificate of John R. Kilby Notary Public was admitted to record, the book in which the same was originally recorded, having been destroyed by the burning of the Clerks Office & Records on the 7th day of February 1864 —

Teste:
W. E. Johnson Clerk

Dr John J. Kelly
with Expenses of Marriage
Contract
Mary H. Bacon

Exhibit "C"

Adopted
Dec 5th
Peter B. Bouton Clerk

This Deed, made the 25th day of March, in the year of our Lord one thousand eight hundred and seventy nine between Joseph P. Hill and Jemima W. his wife, of the Town of Suffolk and State of Virginia, of the one part, and Mrs Mary A. Kilby, wife of Dr. Jno T. Kilby in her own right of the Town of Suffolk, in the State of Virginia, of the other, -

Witnesseth: That in consideration of the sum of Six hundred & sixty dollars ($660.00) receipt of which is hereby acknowledged the said Joseph P. Hill and Jemima W. Hill his wife, do grant with General Warranty, unto the said Mary A Kilby in her own right and to her heirs and assigns forever, in fee simple, all that tract piece or parcel of land, situate lying and being on the East side of Main Street in the Town of Suffolk in the State of Virginia, and bounded and described as follows: Beginning on said Main Street at the North West corner of the lot now owned by Mrs Mary A. Kilby thence running North along said Street forty five feet to the line of Joseph Booth: thence along said Booths line to the land of Mary A. Kilby on the east, two hundred & seventy six feet, more or less, thence South to the lot now owned by Mrs Mary A. Kilby: thence along her North boundary line Two hundred & seventy six feet, more or less to the Starting point, on Main Street.

being the same lot purchased by said Joseph P. Hall from Wm Gunnell and Ann his wife, by Deed dated the 22d day of December 1863. & duly recorded, together with all and singular the appurtenances belonging to the same. And the said Joseph P. Hall covenants that he has the right to convey the said land to the said grantee: that the said grantee shall have quiet possession of the said land that he has done no act to encumber the said land: and that he will execute such further assurances of the said land as may be required.

Witness the following signatures and seals.

Jos P. Hall (Seal)
Tousha W. Hall (Seal)

State of Virginia
County of Nansemond } To wit:

I John H. Wright a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that Mrs Tousha W. Hall the wife of Joseph P. Hall whose names are signed to the writing above bearing date the 25th day of March 1879, personally appeared before me in the County aforesaid, and being duly examined by me privily and apart from her husband, and having the writing aforesaid

Judge explained to her, she the said
Mary V. Hall acknowledged the
said writing to be her act and deed
that she had willingly executed the
same and does not wish to retract it.
Given under my hand this 25th day
of March ~~in the year~~ eighteen hundred
and seventy nine.

Jno. H. Wright
Notary Public.

Virginia }
County of Nansemond } To wit:

I Jno. H. Wright, a Notary Public in and
for the said county, in the State of Virginia,
do certify that Joseph P. Hall whose name is
signed to the writing above, bearing date the 25th
day of March, 1879, has acknowledged the same
before in the county aforesaid.

Given under my hand this 25th day of
March 1879.

Jno. H. Wright
Notary Public

In the Clerk's Office of Nansemond County Court,
the 25th day of March, 1879.
This Deed was received, duly certified: and
thereupon admitted to record.

Teste

Peter B. Prentis Clerk

a Copy:- Teste:

Peter B. Prentis. Clerk

Joseph P. Hall et ux
to
Mary H. Kilby

Exhibit "B"

This Deed made this twenty sixth day of Septem=
ber One thousand eight hundred and seventy one,
between Nancy Benn of the one part and John
W. Ames Trustee for Mary H. Kilby, wife of Dr
John T. Kilby of the other part Witnesseth
That the said Ann Benn in consideration of
the sum of four thousand dollars doth
grant with general warranty unto the said
John W. Ames Trustee for the sole and seperate
use, benefit and behoof of the said Mary
H. Kilby, as herein named, the following real
estate to wit: A lot of land with a large
Brick Dwelling house on the same, and with
outhouses thereon situated in the Town of Suffolk
Nansemond County Virginia and on the East
side of the Main Street of said Town, and is
bounded on the North partly by a lot of
Jos. P. Hall purchased by him of Wm Jenner
and wife and partly also by a lot of said
Hall purchased by him of Sarah J. Elliott: On
the East by a branch; South by the lot
lately held by Mrs Elizabeth Jenkins as her
Dower, and West by the said main Street- together
with all and singular the appurtenances belong=
ing to the Same- with power to said John W. Ames
Trustee as aforesaid to sell and convey the said
Lot and appurtenances, whenever directed by said
Mary H. and other estate to purchase therewith
if so directed by said Mary H. or make such
disposition of the proceeds as she may direct:
And with power to the said Mary H. to dispose
of said Lot and appurtenances by will &c=

-ted as though she were a feme sole, and in default of any sale or disposition by will, then at the death of said Mary A. to her children and their decendants—

Witness the following signature and seal.

Nancy Benn (Seal)

Virginia }
Norfolk County } To wit:

I, John T. Griffin a Notary Public in and for said County of Norfolk and State of Virginia do certify that Nancy Benn, a party of the foregoing writing, bearing date the 26th day of September 1871 has acknowledged the same before me in my said County to be her act and deed.

Given under my hand this second day of October 1871

John T. Griffin
Notary Public.

In the Clerk's Office of Nansemond County Court Oct 12th 1871. This Deed was presented and admitted to Record, on the certificate of John T. Griffin, the necessary Int. Rev. Stamps of $4.00 being affixed and cancelled

Teste
Willis E. Cohoon Clerk

A Copy
Teste:
Peter B. Prentis. Clerk

X 111d

Nancy Benn
To } Bby Deed
John W. Rines, Trustee, for
Nancy H. Kelly, wife of Dr. John
Nancy Kelly

Exhibit "A"

Dunn

$\frac{4}{25}$ } 4 Exhts: filed
with the Bill

Killydals

To the Hon'b. W. Hill Judge of the Circuit Court of Nansemond County.

Complaining sheweth unto the Court, your Complainants S. R. Dunn and Florence Hayden Dunn that Mary A. Killy, was in her life time Seized and possessed of the following real estate in the County of Nansemond, Virginia, to wit:
First. A certain house and lot on the East side of Main Street in the Town of Suffolk, County and State aforesaid, and bounded as follows: On the West by Main Street, on the North by a lot belonging to the estate of said Mary A. Killy dec'd, formerly Jos. P. Hall, Sr.; on the East by a branch, and on the South by the lot of Mrs Ann Parker, formerly Mrs Elizabeth Jenkins; which said lot, by deed dated the 26th day of September, in the year 1871 and duly recorded in Nansemond County Clerks Office, (a Copy of which is hereunto filed, marked Exhibit "A" and asked to be read as a part of this bill, was Conveyed by Nancy Benn & Jno. W. Ames, trustee, for said Mary A. Killy, deceased.
Second. A certain lot of land on the East side of Main Street, in the Town of Suffolk, Virginia and bounded and described as follows: Beginning at the North West Corner of a lot belonging to estate of Mary A. Killy, deceased, on Main Street, and running North along said Main Street

forty five feet to the lot belonging to the estate of Joseph Bodhe died: thence East along Bodhe line two hundred and seventy six feet, more or less, thence South to lot of Mary A. Killy dec'd; and thence West two hundred and seventy six feet, more or less to the beginning; which said lot by deed dated the 26th day of March 1879, a copy of which is herewith filed, marked Exhibit "B" and asked to be read as a part of this bill, was conveyed to said Mary A. Killy, now deceased, by Joseph P. Hall Sr and wife.

Third. A track of land in aforesaid County and State, containing thirty three acres more or less, adjoining the lands of John S. Wright, the Jordan land, and Carney's lands, being said land conveyed by said Mary A. Killy, in her lifetime, and Jno. T. Killy her husband to Jno W. Ames, trustee for her benefit as fully appears by writing herewith filed, marked Exhibit "C" and prayed to be read as a part of this bill. Being so seized and possessed of said real estate the said Mary A. Killy sometime in the year 1887 departed this life, By her last will and testament, a copy of which is herewith filed marked Exhibit "D" and prayed to be read as a part of this bill, she devised the above described real estate unto Nancy Riddick Killy, who has since married Jno

Fourth - A one fourth interest, subject to the dower interest of Mrs Mary Benn therein, in and that piece or parcel of land on Nansemond River, Virginia, assigned to Mrs Benn as and for her dower in the lands of her late husband Thomas Benn, known as part No 1 in a plat of division of said land, and containing sixty two and one half acres. And also one room in the dwelling house on said land.

C. Smith, Mary Bess Kelly, Florence Hayden Kelly, who has since married S. R. Dunn, and Lelia Lee Kelly. The said Lelia Lee Kelly is an infant under the age of twenty one years.
Jno. T. Kelly, the husband of the late Mary H. Kelly is still living, but as your Complainants are informed is willing and ready the waive and relinquish all right of Curtesy in any and all of the real estate above discribed.
And your Complainants further shew that the said real estate is, as they believe, susceptible of partition among the parties entitled thereto; but if be not, then your Complainants desire the same to be sold, and the proceeds divided among the adult and infant parties, according to their respective rights; the share of the infant to be held as directed by the statute in such case made and provided. Should the property not be divisible in kind, your Complainants believe and here shew, that the interests of those who are entitled to said real estate or its proceeds, will be promoted by a sale of the whole of said real estate, or by an allotment of part and a sale of the residue.
In the progress of this suit the Court will

be asked to decree that proper Counsel fee be allowed and paid for the preparation of this bill and the Conduct of the proceedings.
In tender Consideration whereof and for as much as your Complainants are remediless save in a Court of equity where in Matters of this kind are alone and properly Cognizable, your Complainants pray that Jno T. Hilly, Jno. W. Sims Trustee, Nancy Riddick Smith and Jno C. Smith, Mary Benn Hilly, and Lee Lelia Hilly may be made parties defendant to this bill and required to answer the same, answers under oath being waived, that a proper guardian ad litem may be assigned the infant defendant to defend her interests in this suit, who shall also answer the same; that proper process issue; that the said real estate be divided between the several parties entitled thereto, and your Complainants portion allotted to Florence Hayden Sims, and in case the said real estate cannot be divided in kind, that the same be exposed to sale, and the proceeds of such sale divided among the parties entitled thereto, that all proper orders and decrees may be made, and proper enquiries directed, and that all such other, further and general relief may be granted your Complainants, as the nature of their case may require, or Equity

shall seem meet. And yours complainant
will ever pray &c.

E. E. Holland

p. q.

E. E. Howard Esq.

In Chancery

Dunn

vs } Bill

Kilby coals

Newcomerstown Coal Co.

Bill for 3425

S. R. Dunn and Florence Hayden Dunn

vs } Chy: Notes

John J. Kelly & als

1888. July 3rd: Summons in Chy: issued to July Rules, 1888, (3rd: Monday in)

" " 16th: Bill & Exhibits filed — Wilbur J. Kelly, Atty: at Law appointed guar: ad litem, to the infant defendant, Lelia Lee Kelly —

" " " Answer of guar: ad litem filed, in which there was a good: Replication & Cause set for hearing, as to her

" " " Decree pro si vs adult defendants —

" Aug 6th: Decree pro si Confirmed & Cause set for hearing on Mo: of Complainants' Counsel

Chy: Hodes