

1836-16

SOUTHAMPTON COUNTY
CHANCERY PAPERS

DANIEL BUTTS et al vs. EDWARDS BUTTS

9/1836

other surnames: Clements,
Blow, Hart, Simmons, Bell,
Hines, Clanton, Barham,
Nicholson, Bittle, Jones,
Murray, Albert's,
Crichlow

1179
Daniel C. Butts & al.
v ²/₃ Bill, answer
I dec:
Edwards Butts.

Prentiss. att.
~~~~~

1836. Sep. decree as filed &c  
#

Southampton.  
C. C.

To the Worshipful Court of Southampton County, in Chancery  
sitting)

Humbly complaining shew unto the Court, your orators and oratrices,  
Daniel C. Butts, Polly Clements, James Butts, Elizabeth Blow, Edwin  
G. Hart, and Sally his wife, Henry Butts, Francis Butts, Edward Aug-  
ustus Butts, and George Butts, the said George Butts being an infant  
is allowed to sue in this behalf by the said Francis Butts his next  
friend, Charles Butts, Alfred Butts, Anne Simmons, James Bell and  
Mary G. his wife, Nancy Butts, John Simmons Hines and Sarah his  
wife, Thomas Butts, and Rebecca Butts, the said Rebecca being an infant  
suing by Francis Butts her next friend, Alice Butts, Jesse Clanton  
and Elizabeth his wife, Joseph H. Barham and Begg, his wife,  
and Mary Nicholson. Martha Butts, Robert Butts, which said Robert  
is an infant, suing by Samuel Barham his next friend, Thomas M.  
Butts and Rebecca his wife, William Jones; Daniel R. Butts, John  
T. Blow and Sally his wife, George Nicholson, Albert Nicholson, Lucy Anne  
Nicholson, and George Murray, the said George Murray being an  
infant is allowed to sue in this behalf by Robert Murray his  
father and next friend - That some time in or about the year 1826,  
Elizabeth Alberts, late of the county aforesaid, then the wife of one Lewis  
Alberts, departed this life in law intestate, seized and possessed of some  
real estate, which consisted of a plantation tract or parcel of land  
situate in the said county, containing between two and three  
hundred acres, adjoining the lands of John Boykin, the heirs of  
Solomon Turner and others. Your orators and oratrices shew unto  
the Court, that the said Elizabeth Alberts attempted to convey away the  
aforesaid land by will, but as she was a married woman, the said  
will was void and of no effect: That the heirs at law of the said  
Elizabeth Alberts brought suit for the said land and recovered the  
same in the Superior Court of law for the County aforesaid: and your  
orators and oratrices further shew unto the Court, that the said Elizabeth  
Alberts left no child or children, or their descendants, nor father, nor  
mother, but she left brothers and sisters and the descendants of both, and  
your orators and oratrices are advised, that the said real estate under  
the act of assembly in such case made and provided is liable to divi-  
sion among the aforesaid brothers and sisters, and the descendants of such  
brothers and sisters as were dead: the former taking "per capita" and the  
latter "per stirpes": Your orators and oratrices beg leave to give the following  
account of the family, premising that the said intestate had <sup>five</sup> ~~eight~~ bro-  
thers and two sisters, making eight shares in the land so left her.  
John Butts a brother died before the said Elizabeth leaving an only child, who is  
the Compt. Daniel C. Butts - Polly Clements a sister, and James Butts a  
brother are now living. Elizabeth Blow, and Sally Hart are the children  
and heirs of Lucy Cresslow Dec. a sister: Henry Daniel Butts an other brother  
was living at the death of the Intestate, his children heirs & legatees are  
Henry Butts, Francis Butts, Edward Augustus Butts and George Butts -  
Thomas Butts an other brother is dead, but his children and heir, legatees  
and devisees are Charles Butts, Alfred Butts, Edwards Butts, Anne Simmons,  
James Bell and Mary G. his wife, Nancy Butts, & John Simmons Hines and  
Sarah his wife, which said Mary G. Nancy Butts, & Sarah Hines are the  
descendants of Peter Butts, a son of the said Thomas Butts the brother aforesaid,  
and Thomas Butts and Rebecca Butts are the descendants of one William  
Butts, and are the grand children of the said Thomas Butts the elder.  
William Butts an other brother died in the life time of the Intestate. He  
had two sons and a daughter, namely ~~William~~ <sup>John</sup> James, and Nancy - Your  
compt. Alice Butts, Elizabeth Clanton, Sally Barham, are the children  
of the son ~~William~~ <sup>John</sup> Butts as aforesaid: ~~James~~ Your Compt. Martha

Butts, Robert Butts, and Rebecca Butts are the children of the son James Butts and William Jones is the issue left by the daughter Nancy, Butts, who intermarried with one Jones. - Benjamin Butts, an other brother, another brother died in the life time of the Intestate - he left a son named Robert, and a daughter Polly Nicholson. Your Compt. Daniel R. Butts is the only child and heir of the said Robert Butts, and claims to be exclusive representative of his said father's interest. - Polly Nicholson left five children, namely, Polly now the wife of John T. Blow, George Nicholson, Albert Nicholson, Robert Nicholson, and Mary Nicholson. Robert Nicholson is dead, his issue is the complainant Lucy Anne Nicholson. Mary Nicholson is also dead, she intermarried with Doc. Robert Murray, by whom she had issue, namely, the Complainant George Murray, which said five children and the descendants of those who died claim title under the said Polly Nicholson -

and your orators and oratrices, by leave further to represent unto your Worships, that in consequence of the number of the heirs, the inequality of their interest, and the quantity of land, that a division in kind is utterly impracticable, and would be ruinous and destructive to the rights of all the parties. That it is perfectly clear and evidently true, that the share or dividend of each heir will not exceed but must fall far short of the sum of three hundred dollars: under these circumstances, they are advised that this Court possesses ample and complete authority to decree a sale of the said land and to direct a distribution of the proceeds of the sales according to the rights of the respective claimants as herein before set forth, and they pray this Court to decree a sale of the aforesaid tract of land, and to direct a distribution of the proceeds according to law: - " " " "

They charge that Edwards Butts, one of the sons of Thomas Butts, and also one of the heirs in part entitled to the said land is in possession of the same, and that he often applied to for a sale or division of the same but has hitherto refused to comply with the reasonable requests of your Compt. alleging that he would not nor could not undertake to decide who were the proper heirs, and that he would not do any thing in the premises without the sanction and decree of a Court of justice where matters of this sort are properly cognizable and relievable. On their consideration whereof &c. To the fact therefore they pray that the said Edwards Butts may be made defendant hereto, and that he may appear his corporal oath full true and perfect answer make to all and singular the premises, and that as fully as if the same were here again repeated and interrogated. Your orators and oratrices pray a sale of the premises and distribution of the proceeds, as herein before suggested, or in such other manner as to your Worships shall seem meet and proper. and that your Worships will be pleased to make such other or further order or decree in the premises for the relief of your complainants as shall be more consistent with equity and justice.

may it please you to grant &c.

Exerts. atts. for Compts.

The Answer of Edwards Butts to the foregoing Bill of Complaint of Daniel C. Butts & others against him in this Worshipful Court exhibited.

This defendant now and at all times saving and reserving to himself all benefit and advantage of exceptions to the many errors and imperfections in the Complainant's said bill of complaint contained, for answer thereto answers and says. That he admits the several allegations and statements in the said bill set forth to be substantially true and correct, as far as he knows, or believes. The land mentioned in the said bill may be considered as in his possession, he claims no more interest in it, than as one of the children and heirs of his father Thomas Butts deceased who was a brother of the said Elizabeth Albertis. He consents that the same may be sold, and the proceeds divided among the legal claimants, and that this Court may make such decree in the premises as they shall deem proper and correct under the circumstances of the case, without that, that he and his respondent having answered &c. prays to be hence dismissed with his reasonable costs.

(Signed)

September Term 1836.

Comp. Sh.

against.

3. 2. ch. 1.  
Left.

and others, of which Elizabeth Clements and  
w<sup>t</sup> That the said Commissioners, or any of them  
as may act, without regard to the above direction as to a sale upon  
credit, receive from the purchaser or purchasers, a sum in cash suff-  
-ficient to pay the costs of suit, together with the necessary and incidental  
charges and expenses, attendant on the execution of this decree,  
and apply the same accordingly: That after deducting the costs  
of suit and expenses, the said Commissioners ~~or each of them~~  
~~may~~ will then proceed to divide the net amount of sales  
into eight equal parts or shares, taking bonds with undoubted  
security from the purchaser or purchasers, in such made and  
manner as to effect the following legal and proper distribution  
of the proceeds of sales amongst the several heirs, that is to say:  
One 1/8<sup>th</sup> part or share is to be allotted unto each of the Complainants  
Daniel C. Butts, Polly Clements, and James Butts - One other 1/8<sup>th</sup> part  
or share is then to be subdivided equally between the compts Elizabeth  
Blow and Edwin E. Hart & Sally his wife, which said Elizabeth  
and Sally are the children and heirs of Sney Archlow, a sister of the  
decedent, & one other share or eighth part, is then to be subdivided  
between Henry Butts, Francis Butts, Edward Augustus Butts, and  
George Butts, heirs legates and devisees of Daniel Butts dec.  
who was a brother of the deceased: One other share or eighth part is  
to be subdivided between the compts, Charles Butts, Alfred Butts,

Anne Simmons, James Bell and Mary L. his wife, Nancy Butts, John Simmons  
Hines and Sarah his wife, Thomas Butts, and Rebecca Butts, and the  
defendant Edwards Butts, they being the children, and descendants of children,  
and heirs, legatees, and devisees of Thomas Butts dec'd a brother of the  
said decedent. In making this subdivision however, the Court ~~must~~  
of them ~~amongst~~ will take care, that the said Mary L. Bell, Nancy  
Butts, and Sarah Hines who are the descendants of one Peter Butts, a son of  
Thomas Butts, are only entitled to  $\frac{1}{8}$  of the eighth part or share. and the same  
rule as to govern in regard to Thomas Butts and Rebecca Butts, who  
are the descendants of one William Butts, a son of Thomas Butts the brother of  
the said intestate. One other eighth part or share is to be subdivided  
between Alice Butts, Iphigeneia and Elizabeth his wife, Joseph H.  
Barham, and Sally his wife, and Mary Nicholson, the descendants of  
one John Butts, a son of William Butts, brother of the intestate. —  
Martha Butts Robert Butts Thomas W. Butts and Rebecca his wife  
the descendants of James Butts <sup>son of the said William Butts, the brother of</sup>  
William Jones only descendant of Nancy Butts, a daughter of William  
Butts, another son of the William Butts, the elder, the brother of the de-  
ceased. ~~and~~ and the residue or remaining  $\frac{1}{8}$  part or share  
is then to be divided ~~equally~~ between the complainants Daniel L.  
Butts, John T. Blow, and Sally his wife George Nicholson;  
Albert Nicholson, Lucy Anne Nicholson, and George Murray,  
~~they being of the same generation as the deceased~~ they being the descendants  
of Robert Butts, and Polly Nicholson, the only children of one Benja-  
min Butts, who was own brother to the said Elizabeth Alberts.  
In making this division, the said Daniel L. Butts is entitled to one  
half, representing by father Robert Butts, and the other moiety is to  
go to the said John T. Blow & wife Sally, George Nicholson, Albert  
Nicholson, Lucy Anne Nicholson and George Murray, who are  
the children and descendants of the children of the said Polly  
Nicholson. — The Bonds for the parts or shares due to the in-  
fants are to be taken payable to their legal and proper guardians.  
The other bonds are to be taken and made payable to the parties  
respectively entitled to whom the Comptrollees will deliver the sums,  
and make report of <sup>the</sup> proceedings to this Court in order to a  
final decree.