Partition, Divided if possible, if not sold, and proceeds divided

Causcill, Joseph

Lyod. Connell

v. Bill &c

John Connell vols.

1904. 1st July Recd.

Fiat.

D. F. Mills

8

W. Lennox & Corbett

74

To the Honorable Robert E. Prentis, Judge of the Circuit Court of Southampton County.

Complaining showeth unto the Court your Complainant, S. D. Councill, that he is the brother of John Councill, who is a person of unsound mind, and a son of Joseph Councill, all of which are residents of the County of Southampton.

That your orator and John Councill are seized and possessed of two certain tracts of land lying in the County of Southampton, described as follows: the "Home Place" upon which the father of your orator resides, lying in Southampton County, containing 339 acres, more or less, and bounded north by Norfolk & Western Railroad, and lands of G. W. Horn; east by Mary Scott, George Simmons and Mrs. Emaline Johnson; south by lands of J. M. Darden, and west by lands of John Cook, L. H. Stevenson et als.

Second: the farm known as the "Old Place", containing 204 acres, bounded on the north by John Cook; east by J. M. Darden; south by A. B. Clayton and C. E. Joyner and west by C. E. Joyner, Sandy Crocker and Dr. Doles' place, which two tracts of land were inherited through the mother of your orator, now deceased, who was the wife of Joseph Councill.

That at the time of the death of your orator's mother there were five children living, namely: Mrs. W. A. Boykin, wife of J. T. Boykin, Allie B. Councill, wife of John Councill, and Annie M. Johnson, wife of C. H. Johnson from all of whom your orator, by deed duly recorded, has purchased the undivided interest in the land above herein described, so that he now owns in said property four-fifths(4/5) and John Councill, his brother, owns one-fifth(1/5) undivided interest.

Your orator further states that said real estate is, as he believes, not susceptible of being conveniently

partitioned in kind among the parties entitled thereto, but if it can be so divided, then your orator desires the same be done, and if it cannot, then your orator desires that same may be sold and the proceeds be divided among the parties as their interest may appear, the interest of the insane defendant being held in accordance with the statute in such case made and provided.

Your complainant avers and believes that the interest of the defendant will be promoted by sale of the entire real estate and investment of his share of the proceeds therefrom.

That in accordance with the statute of descents, Joseph Councill, father of the insane defendant, John Councill, would be the sole heir at law and distributee of the said defendant at his death.

Forasmuch therefore as your orator is remediless in the premises, save by the aid of the court of equity, he prays that the said John Councill and Joseph Councill may be made parties defendants to this bill, and required, but not on their oaths, to answer the same, the oath being hereby waived, the said adult in his own proper person and the insane defendant by his guardian ad litem; that a proper guardian ad litem may be appointed for the insane defendant who shall also answer this bill; that if said real estate is divisible in kind that same be divided between the parties entitled thereto, or else that it be sold and the proceeds divided in case it be indivisible in kind; that all proper orders and decrees may be made, accounts taken and inquiries be directed, and that all such other, further and general relief as in the premises may be just and right may be granted.

Notice is hereby given that the Court will be asked to allow a reasonable fee for the plaintiff's counsel conducting this cause.

And your complainant will ever pray etc.

McLemore & Corbitt P.Q.

To the Honorable Robert R. Prentis, Judge of the Circuit Court of Southampton County.

S. D. Councill

v.

John Councill, an insane person,
and Joseph Councill.

The undersigned special commissioner appointed by decree of the Circuit Court of Southampton County on the 17th. day of October, 1904, begs to report that he has executed to S. D. Councill a deed with special warranty for the one fifth interest in the two tracts of land described in the bill of complainant, one containing three hundred and thirty nine (339) acres, more or less, as a whole, and the other containing two hundred and four (204) acres, more or less, as a whole, for which he received the sum of six hundred and eighty ($680.) dollars, the purchase price therefor, which six hundred and eighty dollars includes his portion of the costs of this suit, and the share of the insane defendant, John Councill.

Your commissioner is advised that S. D. Councill has made all arrangements for qualifying as committee on the estate of the said insane person, and when he has so qualified and given bond in accordance with the statute, your commissioner wishes to be allowed to turn over the funds to him.

Your commissioner would also respectfully report that this insane defendant, John Councill, is hopelessly an invalid; that he cannot walk, nor has he scarcely any use of his hands, and h has to be attended and waited on all the time; that he has for sometime lived with his brother and father, who live in the same house; that his father is now old and infirm, and the entire care of this unfortunate member of the family devolves upon the said S. D. Councill who has recently bought all of the in-

terest of the other members of the family in this property.

Respectfully submitted,

Dec. 15, 1904 James L. McLemore

Special Commissioner.

Council

Stat: Rules

Council + al:

S. D. Councills.

vs

John Councill, and insane person,
and Joseph Councills.

1904 - June 24. Process issued to 1st July Rules.

" 1st July Rules: Bill filed. E. Frank Story assigned Gdn. ad litem to insane Defts.
Process ret'd. Executed.
Decree Nisi.

1904 - 2 July " Bill taken for Confessed as to Joseph Councills. and Cause set for hearing as to him.

Comeill

vs } Strains Chix-

Comeill & al:

1904. 1. July Rec'd

Executed June 27-1904
by delivering a copy
of the within to
Joseph Comeill and
John Comeill

A. F. Cobb
J. L. Gillon
Sh'ff.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON John Council an infant over the age of 14 years and Joseph Council

to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules to be holden for the said Court on the first Monday in July 1904 ~~next,~~ to answer a Bill in Chancery exhibited against them in our said Court by B. D. Council

And this you shall in nowise omit under penalty of law. And have then there this writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this 24th day of June, 1904, in the 128th year of the Commonwealth.

Teste:

B. F. McLemore, C. C.

Council D.D.

Vacation

John Council et als.

To the Honorable Robert E. Trawick, Judge of the Circuit Court of Southampton County:

No. 2. D. Council, John Council, an insane person, by Grant Bivy, his guardian ad litem, and Joseph Council.

Your petitioners, John Council and Joseph Council, respectfully represent unto your Honor that they are the children of D. Council, deceased, late of Southampton County, Virginia, and that the said D. Council died seized and possessed of a tract of land containing about one hundred and fifty acres, more or less, situated in Southampton County, Virginia, on the waters of Nottoway River, and bounded as follows: On the North by lands of Jesse Council, on the East by lands of Jesse Council, on the South by lands of Jesse Council, and on the West by lands of Jesse Council, Jr., and Jesse Council, Sr., and that the said D. Council died intestate, leaving him surviving as his only heirs at law your petitioners and Mary Council, widow of the said D. Council, deceased, and Jesse Council, Jr., and Jesse Council, Sr., and

TO the Honorable Robert R. Prentis, judge of the Circuit Court of Southampton County:

We, S. D. Councill, John Councill, an insane person, by E. Frank Story, his guardian ad litem, and Joseph Councill, hereby consent that the papers in the chancery cause of S. D. Councill v. John Councill, an insane person, and Joseph Councill, pending in the Circuit Court of Southampton County, be submitted to the judge of this court for such decisions and decrees therein in vacation as might be made in term.

Given under our hands this 12th day of December, 1904.

- Sign. S.D.C. S. D. Councill

{Sign. E.F.S. Gdn ad litem.} John Councill,
by E. Frank his X mark Story

- Sign Jos. C. Joseph his X mark Councill

Witness A T Bryant

Witness as to E. Frank Story } Julia A. Brinkley

Mr Story had rheumatism at this time was unable to write
Jas. L. McLemore

John Connell
3 Answers of
ads-3 Gen'l Cits
3
S. D. Connell

"The separate answer of John Councill, an insane person, by E. Frank Story, his guardian ad litem, assigned to defend him in this suit, to a bill of complaint exhibited against him and others, in the circuit court for the county of Southampton, by S. D. Councill.

"The respondent reserving to himself the benefit of all just exceptions to said bill, for answer thereto, or to so much thereof as he is advised that it is material he should answer, by his said guardian ad litem, answers and says:

"That being an insane person, he is incapable of understanding, or of taking care of his rights and interests. He, therefore, by his said guardian commends his rights and interests to the protection of the court, and prays that no decree may be pronounced which will tend to his prejudice.

"And having fully answered, the said respondent prays to be hence dismissed with his reasonable costs in this behalf expended, and he will ever pray, etc.

Stewart & Story,
Sol'rs. ad Litem.

S. D. Cauncell

vs. } Report of Comr.

John Cauncell et als

Oct. 6th, 1904 Filed

B F M

S.D.Councill, Plaintiff.

vs.

John Councill, person of unsound mind, and Joseph Councill, Defendant.

This day this cause, which was regularly matured at rules, came on to be heard upon the bill of the complainant filed at rules, the bill taken for confessed as to the adult defendants and the answer of E.Frank Story, guardian ad litem for the insane defendant, John Councill,duly assigned at rules, with general replication thereto, and was argued by counsel. On consideration whereof the court doth adjudge, order and decree that this cause be referred to one of the commissioners of this courtwho is directed to inquire and report to court-

1st:-An account of the real estate in the bill and proceedings mentioned showing the interest of the several parties to this suit therein, and its value.

2nd:-Whether or not same can be conveniently partitioned in kind among the parties entitled thereto in any of the modes prescribed by the statute.

3rd: If not then whether or not any parties in interest will take the entire subject matter and pay to the other party such such sum or sums as their interests therein may entitle them to.

4th:Whether or not the interest of any party will be violated by the sale of the entire subject matter and division of the proceeds according to the several rights of the parties.

5th:Whether or not there are any lien debts against the property, or delinquent taxes due thereon.

6th:-Any other matter being deemed pertinent by the commissioner or required to be stated by any party in interest.

A copy. Teste:-

B. F. McLemore C.C.

Commissioner's Office.

Courtland, Va. Oct. 6th, 1904.

To the Circuit Court of Southampton County, Va.

Pursuant to a decree of the Circuit Court of Southampton County, entered on the 18th day of July, 1904, in the chancery suit therein depending styled S.D.Councill vs. John Councill et als, the undersigned, a commissioner in chancery of the above styled court to whom was referred for settlement the accounts of the said decree, begs to report that on the 17th day of September, 1904, he issued notices against the parties to the said suit requiring them to be present at his office on the 6th day of Oct., 1904, to attend the taking and settling of the said accounts of said decree, which notices were duly executed according to law.

In accordance with said notices, the parties to the said suit or their representatives assembled at the office of your commissioner on the day named, and he proceeded to take the depositions of C.E.Joyner and F.P.Pulley to assist him in making said report, which depositions are filed herewith as a part of this report.

Your commissioner begs further to report:-

1st:- S.D.Councill and John Councill are are seized and possessed of two tracts of real estate described as the "Home Place", containing 339 acres, valued at $2500.00, Annual value of $150.00.

The "Old Place", containing 204 acres, valued at $900.00 Annual value of $50.00, the two together being worth $3400.00.

2nd:-The said real estate can not be conveniently divided in kind.

3rd:-S.D.Councill, one of the parties who owns 4/5 interest in the real estate above mentioned expresses a willingness to take the entire property at the above valuation, and your commissioner recommends that he be allowed to do so.

4th:-No parties interest will be violated by allowing S.D. Councill to take the entire subject matter, and paying the other interested party such sum as his interest therein will entitle him to receive.

5th:-There are no liens for delinquent taxes or otherwise.

6th:- The interests of the parties are:-

S.D.Councill four fifths.

John Councill one fifth.

Respectfully submitted,

Joseph B Pruden

Commissioner in Chancery.

Commissioners fee $6.00
F.P.Pulley..... 1.10, (18 mi.)
C.E.Joyner..... 1.10 (" ")
$8.20

16/64

~~Witness S.D.Councill being duly sworn deposes as follows~~

~~The~~ To the Hon. Robert R.Prentis, Judge &c.,

I, S.D.Councill, ~~a~~ complainant in the chancery cause of S.D.Councill against John Councill and others hereby express my willingness to take the real estate in the bill and proceedings mentioned at the vauluation placed thereon by Mr. F.P.Pulley, one of the witnesses in this case, paying to the other parties such sums as their interests therein may entitle them to, based upon said valuation.

S. D. Councill

October 6th,1904.

The depositions of F.P.Pulley andC.E.Joyner, taken before me Joseph B.Prince a commissioner in chancery of the Circuit Court of Southampton County, Va., pursuant to notice of the time and place of taking an account in the chancery suit of Councill Vs. Councill et als to assist said commissioner in making a report in said suit.

Present:- J.L.McLemore for the plaintiff.
E.Frank Story, Gdn. ad Litem.

Witness C.E.Joyner after being first duly sworn deposes as follows:-

Q. State your name, age, residence, occupation, and do you know t the parties to this suit ?

A... C. E.Joyner, 34, Southampton County, near Zuni, farmer, and know the parties to this suit.

Q.. I am reading to you a description from the bill of complainant of the two tracts of land which are the subjects of inquiry at this time; do you think this property can be conveniently partitioned in kind among the parties entitled thereto without injury to any interest affected ? First are you familiar with the property ?

A. I am. I do not it can not be done.

Q. Would it in your judgment be to the interest of all parties to have the property sold and the proceeds divided among the several parties in interest according to their respective rights ?

A. It would be to their interest to have the property sold and the proceeds divided.

Q... What do you consider the value of the Home Place ?

A. $2000.00 fee simple, and annual value $100.00.

Q. As to the Old place, its value ?

A.. Fee simple value of about $$800.00, annual value of $$75.00

The lumber has all been sold off this farm.

And further this deponent saith not.

Sworn to me

C. E. Joyner

Witness F.P.Pulley after being duly sworn deposes as follows:-

Q. Your name, age , residence, occupation, and do you know the parties to this suit, and are you familiar with the land in the bill and proceedings mentioned ?

A... F.P.Pulley, 62. Southampton County, farmer, I know the parties to the suit, and I am familiar with the property.

Q. In your judgment can this property be conveniently ~~divided~~ partitioned in kind among the parties entitled thereto ?

A.. I think not.

Q. Do you think it would be advantageous to all the parties interested to have the property sold and the proceeds divided in accordance with their respective rights ?

A.. I think it would .

Q.. How long have you known this property ?

A. 24 or 25 years.

Q. What do you consider its annual and fee simple value ?

A. The Home place is worth $2500.00, annual value of about $150.00
The Old place $800.00, annual value of about $50.00.

Q. Do you know whether any party in interest will take the entire property and pay the others such sums of money as their interests therein will entitle them to ?

A.. No.

Q... What do you consider this property under present conditions would sell for at public auction upon reasonable terms as to payments ?

A. I think both tracts would not sell for more then $3400.00 or $3500.

And further this deponent saith not.

F. P. Pulley

18 mi.

OFFICE OF JOS. B. PRINCE, JR.,

Commissioner in Chancery for the Circuit Court of Southampton County, Virginia.

Courtland, Va., Sept. 17th, 1904. 189

To

S.D.Councill,

and

John Councill, an insane person, Joseph Councill and E.Frank Story, Guardian ad litem, to insane defendant.

You are hereby notified that I have fixed upon the ~~17th~~ 6th day of ~~Sept.,~~ Oct 1904, if fair, if not the next fair day thereafter (Sunday excepted), to take and settle, at my office, the following accounts, to-wit:

1st:-An account of the real estate in the bill and proceedings mentioned, showing the interest of the several parties, to this suit, and its value:

2nd:-Whether or not same can be conveniently partitioned in kind among the parties entitled thereto in any of the modes prescribed by the statute:-

3rd:- If not whether any of the parties in interest will take the entire subject matter and pay to the other parties such sum or sums as their interest therein may entitle them to:

4th:-Whether or not the interest of any party will be violated by sale of the entire subject matter and division of the proceeds of sale according to the several rights of the parties:

5th:-Whether or not there are any lien debts against the property for delinquent taxes or otherwise:

6th:- any other matters I may deem proper in the discharge of my duties required to be stated by any of the parties.

required to be taken by a decree of Southampton Circuit Court, rendered at the July term, ~~1899~~ 1904, 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 said Court the day and year first aforesaid.

Joseph B Prince, Commissioner.

To the Sheriff of Southampton County to execute.

J D Connell

vs } Notice

John Connelle et als

I hereby acknowledge due & legal service of the within process -

J. D. Connell

by Mc Lemore Scarlett his attys

I Executed the within notice by delivering a true copy thereof on the 5th day of Oct. 1901 to Joseph Connelle & E. Franck thereby and by virtue -

J. W. Bryant

Dep. Sheriff for J. L. Fretwell

Council & Council -

Spr a 25 - Copies 75.
Rest 18. Atty 10. Docket 18. Rule 50 -
Subpoena duces 35. Filing bill 15.
Rule 50 - Replication 15. Comm. Report 15
3 dimes & Cop. 2.16.
Pay Costs & Filing away papers 25.

paid. B7m bill $ 5.57
" B7m Shff 1.00
Paid W. Lemmon Herbitt Surg. 16.50
p. B7m Jurors Cost 0.87 8.7
$ 33.94
p. B7m Chas J B Pierce. 6.00
Witnesses:
C. B. Joyner paid C. E. Joyner 1.14
p. B.7.m F. P. Pulley - 1.14
$ 32.22

1/5 to John Council = 6.45

Recd December 19th 1904 of James L. W. Smoot, Special Commissioner in the Chancery Cause of S. D. Councill v. John Councill an insane defendant and Joseph Councill the sum of Six Hundred and Eighty Dollars same being the full amount in his hands from sale of the interest of said John Councill insane defendant, I am to pay his share of the costs out of this funds coming into my hands for him.

S. D. Councill
Committee of John Councill

Witness:
B. F. McLemore

Cannell,
v.
Cannell

Final Report

1905. March 20th
Filed

Cannell

Cannell

Councill

v.

Councill

The undersigned commissioner begs to report that in pursuance of decree of December 17th.,1904, he collected six hundred and eighty (680.00) dollars, the share of John Councill, an insane person, from the land sold by your commissioner, and that he has paid same over to the committee of the said John Councill, namely, S. D. Councill, the said S. D. Councill to pay the costs of the suit, all of which will appear by the attached receipt filed herewith.

Respectfully submitted,

March 1. 1905

Jas L. McClure
Special Comr.

S D Cannell
v. Decree
John Cannell sol.

190x. Octo 17th.
Entd.
[redacted]

Entered
C. O. B. p. 113.
"

S. D. Council

v.

John Council an insane person and
Joseph Council

This day this cause came
on again to be heard upon the papers for-
merly read, and upon the report of Commis-
sioner Jos. B. Prince filed October 6th 1904,
to which report no exceptions have been
taken and was argued by Counsel. On
consideration whereof, the Court doth ad-
judge order and decree that said report
be and the same is hereby confirmed, and
it appearing to the court therefrom that the
land in the bill and proceedings mentioned
cannot conveniently be partitioned in kind in any
of the modes prescribed by the Statute, but
that S. D. Council one of the parties in
interest, being willing to take the entire
subject matter and pay to the insane
defendant for his one fifth interest therein
the sum of $680 upon the valuation of
$3400, the Court doth adjudge, order
and decree that the said S. D. Council
be allowed to pay to ~~said John Council~~
~~or to his legal representative~~ purchase
the interest of said John Council insane
defendant, and that Jas. L. McLemore

who is hereby appointed a special Commissioner for the purpose do proceed to collect from the said S.D. Council the sum of $680. and when same has been done that he execute to the purchaser a deed, with special warranty, for the 1/5 interest aforesaid, in the two tracts of land owned jointly by them, one known as the "Home place" and containing 339 acres more or less, the other known as the "Old place" containing 201 acres more or less described more specifically in Plaintiffs bill. But before said special Commissioner shall proceed to act hereunder he shall enter into bond before the Clerk of this Court, in the penalty of $1000. conditioned for the faithful execution of this or any future decree that may be entered herein - and he will report to Court. It is also decreed that the costs of this suit be shared ~~equally~~ according to the interest between the said S.D. Council and John Council

Council1

v. DECREE

Council1

Enter 17 day of Dec. 1904.

To the Clerk of the Circuit Court, Johnson County.

Entered
O. O. B. p. 131.

"

authorized to expend for the maintenance, support and nurture of said insane defendant, a sum not to exceed fifteen dollars per month, reporting his proceedings as such County Judge to this Court annually.

IN THE CIRCUIT COURT FOR SOUTHAMPTON COUNTY, December 17th. 1904.

S. D. Councill

v.

John Councill, an insane person,
and Joseph Councill.

This day this cause came on again to be heard upon the papers formerly read, and upon the report of James L. McLemore Special Commissioner, filed December 17th., 1904, reporting collection of the purchase price, and execution of the deed with special warranty to the purchaser, S. D. Councill, for the land in the bill and proceedings mentioned, to which no exceptions have been taken, and was argued by counsel.

On consideration whereof, and it appearing to the court that the parties, plaintiffs and defendants, have by a writing duly signed and filed in the papers of the cause consented that the papers herein be submitted to the judge of this court for such decisions and decrees therein in vacation as might be made in term, it is accordingly so ordered, and the court doth adjudge, order and decree that so soon as the legally qualified committee of the estate of the said insane defendant, John Councill, shall have executed a bond before the clerk of this court in the penalty of twelve hundred dollars, conditioned for the faithful application of the fund and for t the management and preservation of any property or securities in which the same may be invested, and for the protection of the rights of all persons interested therein whether such rights be vested or contingent, pay over to said ~~personal~~ committee ~~representative~~ of the insane defendant the amount in his hands taking his receipt therefor, and report to court. The court doth further adjudge, order and decree that the said ~~personal~~ committee ~~representative~~ of the insane defendant, in his discretion is

authorized to expend for the maintenance, support and nursing of said insane defendant, the sum not to exceed fifteen dollars per month, reporting his proceedings as such committee to this court annually. all of which is certified to the Clerk's Office of said Court to be entered in the chancery order book.

Robert R. Ellis

To the Clerk of the Circuit
Court of Southampton County.

S. D. Councill, ----------Plaintiff

vs.

John Councill, person of
unsound mind, and Joseph
Councill, ---------- Defendants

=======O*****O======

This day this cause, which has regularly matured at rules, came on to be heard upon the bill of complainant filed at rules, the bill taken for confessed as to the adult defendants and the answer of E. Frank Story, guardian ad litem for the insane defendant, John Councill, duly assigned at rules, with general replication thereto, and was argued by the counsel.

On consideration whereof the court doth adjudge, order and decree that this cause be referred to one of the commissioners of this court, who is directed to inquire and report to court-

First, an account of the real estate in the bill and proceedings mentioned showing the interest of the several parties to this suit therein, and its value.

Second, ~~an account~~ whether or not same can be conveniently partitioned in kind among the parties entitled thereto in any of the modes proscribed by the statute.

Third, If not then, whether or not any parties in interest will take the entire subject matter and pay to the other party such sum or sums as their interest therein may entitle them to.

Fourth, Whether or not the interest of any party will be violated by the sale of the entire subject matter and division of the proceeds according to the several rights of the parties.

Fifth, Whether or not there are any lien debts against

the property, or delinquent taxes due thereon.

Sixth, Any other matter being deemed pertinent by the commissioner or required to be stated by any party in interest.

councill

v.

Cuuncill

This day this cause came on again to be heard upon the papers formerly read and upon the report of Special Commissioner, James L. McLemore, filed this day, reporting disbursement of the funds in his hands, supported by proper vouchers, and was argued by counsel.

On consideration whereof the coutt doth confirm the said report, and nothing further remaining to be done in this cause it is ordered that the same be removed from the docket.