

1823-003 Chancery Causes: Polly Underwood vs Elizabeth Underwood, widow of John

Dale of Wight County

Underwood

Plat in Overseize Box 3

To the worshipful the Justices of ~~Hampshire~~ Isle of Wight
County. In Chancery sitting.

Polly Underwood, John Underwood, Sally Underwood, Moses Underwood
and Samuel Underwood, which said John, Sally, Moses and Samuel
are infants, under the age of twenty one years, suing, in this behalf
by the said Polly their sister, and their next friend, ~~humly~~ complaining,
shew unto your worships: That a certain John Underwood, your Ora-
tors and Oratrices father, late of the County of Manselmond, was in his life
time, and at the period of his death seized in fee simple of in and
to two tracts or parcels of land one of them said to contain five hundred
and sixty two acres, situate in the County of Isle of Wight, adjoining the
lands of Demima Eley, Richard Pope and others. The other tract is a
smaller parcel whereon the said father resided, and is situate in the County of
Manselmond, said to contain forty eight acres, adjoining the lands of the
late Frederick George, Nathaniel Wright and others. That their said
father, departed this life intestate, on or about the day of the
year 1815, leaving a widow named Elizabeth, who is now also living,
together with your Orators and Oratrices, and a child named Patsey, his
heir at law. That on the death of the said intestate, his lands aforesaid
descended and passed to his said children as his heirs at law, subject only to
the right of dower of their said mother of in and to one third part
thereof, during their natural life: and that the said lands on and by
the laws of the ~~Country~~, ought to be immediately liable to division
into three equal parts or shares whereof the said Elizabeth their mother
is entitled to one third for life and the other two thirds among your
Orators, and Oratrices: the said Patsey, their sister having died an infant
of tender years, entitled to a share in the lands derived from her father,
her interest descended and passed to her brother and sister, who are your
Orators and Oratrices. And your Orators and Oratrices beg leave
to represent unto your worships that their said mother who hath
also become the guardian of such of them as are infants, upon the
death of the said John Underwood, possessed herself of the said lands
and has enjoyed ^{them} entirely. No division having ever been made: and
without some activity on their part, it is believed that no allotment
of dower or division of any sort will be asked for. That all the
applications which have been made by the said Patsey who is at age,
on her own account as well as by her as next friend to her infant
brother and sister have been resisted and have reacted on and
forced to do any thing on the premises without a decree of a Court
of some competent authority: all which actings and doings are
contrary to equity and good conscience, and tend to the manifest

injury and oppression of your orators and oratrices. In tender consideration whereof, as for as much as your oratrices, and orator are remediless in the premises, without the aid and interposition of a court of competent authority.

To that end therefore, they pray, that the said Elizabeth Underwood their said mother may be made a defendant ~~with~~ with apt and proper words to charge her, that she may, so far as discover and declare, whether the said John Underwood, her former husband, did not die possessed and seized of the lands aforesaid, and has not a correct general description been given of the same. Has any division of the same ever been made, does she claim any other, or greater interest, than dower in one third part thereof; Is she willing that the Court should direct and decree a division, and allotment of dower in the tract of land in Isle of Wight as well as in the small piece in Nassau-mond? If not to the interest of all parties concerned, that a division of both tracts should be made at one and the same time, and ~~and~~ not a separation of interest in the two tracts, be very injurious. Is she willing that the Court should enter up such a decree, as the justice and equity of the case requires.

And your oratrices and orator represent that the land aforesaid is all their estate, ~~with the exception~~ ^{to money} of a very small portion in the hands of the orator. perhaps about enough to satisfy the costs and charges attendant on this suit. They pray that your worship, will decree, or order to effect all justice more completely between them, that Commissioners, be appointed as well to divide the land in Isle of Wight as the small piece in Nassau-mond. that the two sets of fourths, be put and added together, and make such allotment and division as to them may seem proper.

And that your worship, will be pleased to make such other or further order and decree in the premises, as shall be more consistent with the principles and practice of Courts of Equity.

May it please the Court

The Answer of Elizabeth Underwood, widow and relict of John Underwood dec'd. to the bill of complaint against her exhibited by Polly Underwood, of age, and John Sally, Moses and Samuel Underwood infants, suing in the behalf by the said Polly their sister and next friend, in the worshipful Court.

This defendant now and at all times hereafter saving and reserving to herself all benefit and advantage of exceptions to the many errors, and certainties, and false allegations in the complainant's said bill of complaint contained, for Answer thereto, as unto so much thereof, as she is advised, is material or necessary for her to make answer unto, answers and says.

That it is true that the complainant are her children, that the late John Underwood her husband died about the time charged in the said bill of complaint - that he was a man in very slender circumstances. That she was left with six children who are the complainants together with Patsy who died about three years since an infant. That she has had to struggle very hard for the support of herself and her children, and that she has always endeavored to bring them up in the best manner which her very limited resources and capacity would enable her to do. That it is true that no division of the land has been made, but it is not true that she has enjoyed the profits and emolument resulting from it. That whenever she could get any rent therefrom, has been regularly applied to the benefit of the children. and that in no one instance, has she received more than a competence for the support of one child for a year. That if it had not been for her great exertions, and labor bestowed upon them, they must have suffered. The land having been used in the manner above mentioned, this defendant did not believe that it was to the intent of the children, that a division should be had. but that now, ^{one} of them has arrived at a good person John very nearly so, and as they can do so, for a division she cannot refuse her consent. And here this defendant further answers and says, that she only claims one third part of the said parcels of land in the bill mentioned, as her dower for life. That she agrees with the complainant that it is entirely correct and proper that the land in Isle of Wight, together with the small piece in Nassau-mond should equally become the subject of division in one and the same calculation of interest, and that unless this can be done, she should be unwilling for a division. That if the tracts should be the subject of separate decrees and division, the costs and charges can not be borne by the parties. she therefore humbly conceives

and hopes that the Court will make their decree so as to comport with the
principles of equity, and good conscience. without that, that I.
witness:
Wm D. Daskill

Elizabeth ^{her} Underwood
mark.

Polly Underwood Jothers
vs. & Bill and
Elizabeth Underwood.
answer.

December 10th 1821 Bill and answer
filed and entered as such.

Provis. att.

Sole of Wright

Compts. [#]
 { in ch. g.)

Sept. 10

By Consent of the parties and with the support of the Court, this cause came on this day to be heard on the bill and answers filed therein and was argued by Counsel. On consideration whereof the Court doth adjudge order and decree that Benjamin Powell, David Roberts and Elias, Sherriffs of the County aforesaid, and Robert Sadar, William D. Dashiell, John Penner and Peter Apphourn, of Nansemond, or any four of them, to be aided by a surveyor (if necessary) do assign and apportion unto the defendant, one full and equal third part of the two tracts of land in the bill mentioned, one said to contain two hundred and sixty two acres more or less and the other forty eight acres - as and for her dower to be held for her life, in the lands of her late husband John Underwood - And the said Commissioners as such of them as may act, will then proceed to divide the remaining two thirds, into five equal parts or shares and divide them among all the complainants. In which said assignment and division, the said Commissioners are to pay due regard to quantity as well as quality. And make report of their proceedings to this Court in order to a final decree: Liberty is reserved to the parties in this suit to shew cause if any they shall against this decree, at any time within one year after they shall attain the age of Twenty One years.

Deere.

Isles of Wight County December Court 1821

Polly Underwood, John Underwood, Sally Underwood, Moses Underwood, and Samuel Underwood, which said John, Sally, Moses, and Samuel are infants under the age of twenty one years, suing in this behalf by the said Polly their sister and next friend

against

Elizabeth Underwood, widow and relict of John Underwood Deft.

Compl't

An Ch'cy

By consent of the parties and with the assent of the court this cause came on this day to be heard on the bill and answer filed therein and was argued by counsel, on consideration whereof the court doth adjudge, order and decree that Benjamin Powell, David Roberts, and Elias Saunders of the county aforesaid, and Robert Jordan, William J. Dashiell, John Cinnur, and Peter Ashbourn of Newbern, or any four of them, to be aided by a surveyor if necessary, do allot and assign unto the defendant, one full and equal third part of the two tracts ^{of land} in the bill mentioned, one said to contain two hundred and sixty two acres more or less, and the other forty eight acres, as and for her dower to be held for her life, in the lands of her late husband John Underwood, and the said commissioners or such of them as may act, will then proceed to divide the remaining two thirds into five equal parts or shares, and divide them among all the complainants, In which said assignment and division the said commissioners are to pay due regard to quantity as well as quality, and make report of their proceedings to this court in order to a final decree; ^{liberty} is reserved the infants in this suit to shew cause if any they can against this decree, at any time within one year after they shall attain the age of twenty one years -

Attest Nathl Younger

Underwoods of friend

10.1

Underwood

copy of the

Mr Prentiss,

I am willing and do consent that a decree may be entered
up for the allotment of dower, and division of the land, whereof my late
husband died, seized and possessed, and for so doing this shall be your
authority. Given under my hand, not only a widow and relict of my
late husband John Underwood, but as guardian of my infant children
John, Sally, Moses and Samuel Underwood
Nov. the 30th 1821.

Witness

James Evans

Benjamin Carr

Elizabeth

X Underwood
mark

No. 5
60 acres
John Underwood

S 30° W

No. 4
60 acres
Sally Underwood

S 30° W

No. 3
120 acres
Saml. Underwood

S 30° W

No. 2
150 acres

Olly Underwood

S 45° E

No. 1
60 acres
Moses Underwood

Manilla Slips Land

Upper Underwood Land

Sw. Fork Road

Sands belonging to the Estate of May Robt. Slips estate

Little Town Road

Underwood
&
Underwood
Division of
Report of
Land

Underwood

City

Underwood

January 1923 report ret'd
& account accordingly

January Judgments
1923

Cheswight County June 13th 1822

Surveyed for the heirs of John Underwood decd four hundred and fifty acres
and situate lying and being upon the South side of the Currywagh Road in the County
said adjoining the lands belongin to the heirs of Maj^r Robert Eley decd and others - begin-
at the foot of a small branch - Eleys line Then up the said branch N. 11° W. 32 pole
S. 6° E. 12 po. - N. 43° W. 22 po. - N. 64° W. 12½ po. to a marked pine - N. 55° W. 22 po. - N. 50° E. 64 pole
N. 54° W. 33 po. to a pine at the path - N. 46° W. 56 pole - N. 46° W. 42 po. - N. 43° W. 34 pole -
N. 55° W. 16 po. - N. 51° W. 98 po. to a pine a corner tree. Then S. 15° W. 34 pole - S. 17° W. 15 po.
W. 9 pole - S. 29° W. 18 po. - S. 16° W. 8 poles to a White oak at the head of a branch -
W. 6 po. - S. 20° W. 39 po - S. 9° W. 24 po - S. 21° W. 16 po. - S. 17° W. 48 pole - S. 38° W. 20 po
Thump a corner in the edge of the procoson - Then N. 88° W. 14 po. - N. 57° W. 50 pole -
S. 8° W. 12 po. - N. 60° W. 32 pole - N. 88° W. 31 pole to a pine corner tree Robert Eley and
his Powell - N. 10° W. 6 po. to the Currywagh road; then along said road N. 40° E.
pole - N. 13° E. 38 pole - N. 45° E. 8 po. - N. 54° E. 16 po. - N. 18° E. 10 po. to a white oak Saplin
N. 53° E. 42 pole - N. 86° E. 28 pole - N. 58° E. 12 po. - N. 41° E. 58 po. - N. 46° E. 46 pole - N.
E. 16 po. - N. 77° E. 18 po. - N. 87° E. 32 po. to Sign post - S. 84° E. 89 po. to sign post -
S. 2° E. 20 po. - S. 38° E. 22 po. - S. 34° E. 21 po. to a large oak - S. 40° E. 18 po. to Mr Eleys path
S. 8° E. 32 po. to post oak - S. 51° E. 37 po. to Red oak at fence - S. 59° E. 48 po to post oak - S.
E. 13 po. to post oak - S. 73° E. 31 po. to a pine - S. 75° E. 42 po. to Large red oak - S. 78° E.
po. to red oak - S. 80° E. 12 po. - S. 86° E. pole to the Swamp then up the Swamp the
various compasses thereof to the first Station. - Magn^a Varia: 1° 30' East

Agreeable to the direction of Commissioners appointed by the Court of Ipswich ~~the said Commissioners~~ have divided the said lands as follows, to wit, the dividing line for lots No. 1 and 2 begins at a small white oak sapling by the side of the Currywough road and runs along a line of new marked trees S. 45° W. to Robert Elys line —

The dividing line for lots No. 2 and 3 begins at a post oak sapling by the side of the Suffolk road
begins Underwoods, thence along a line of new marked trees S. 32° W. to the said Robert Ely line
begins at a post oak in Marcilla Ely line thence along a

of new marked trees S. 39° W. to the said Robert Elys line and

The dividing line for lots N^o 4 and 5 begins at a large red oak in Marcella's Gley's line and runs along a line of new marked trees to the said Robert Gley's line —

J. S. Smyth Surv.

Thomas Smully Surv.

Pursuant to the annexed decree of the honorable court of Isleswright County
~~we the undersigned~~ commissioners have proceeded to divide the lands of John
Underwood dec'd, we have assigned to Elizabeth Underwood as her dower
life the tract of land in the county of Stansemond (where she now is)
said to contain forty acres more or less she being willing and consenting
to accept of the same for her said dower

The other tract of two hundred & sixty two acres as was supposed, situated
in the County of Isleswright is found by Survey to contain four hundred
(and fifty) acres which we believe to be worth \$900. and we having
regard to quality as well as quantity have divided and assigned
follows to wit, — To Moses Underwood we have assigned lot No. 1
worth \$180, — To Polly Underwood we have assigned lot No. 2 — 130
worth \$180, — To Samuel Underwood lot No. 3 — 120 acres worth \$180,
To Sally Underwood we have assigned lot No. 4 — 60 acres worth \$180. —
to John Underwood we have assigned lot No. 5 — 60 acres worth \$180. —
of which more plainly appears by reference to the annexed plan
we report to the court. This 29th June 1822

Benjamin Powell

David Roberts

John Pinner

Peter Ashbourn