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GULIELMA E. SMITH, et al.) No..... October Term, 1895.
)
 vs.) -o-
)
 ARCHIBALD SMITH, et al.) Petition for Equitable Relief.

-:O:-

It is Ordered by the Court, that Archibald Smith, Jr., be appointed Guardian ad litem for Francis M. Smith and Arthur W. A. Smith.

This 6th day of August, 1895.

N. L. HUTCHINS,
Judge Supr. Court.

I accept the above appointment as Guardian ad litem. This day of 1895.

ARCHIBALD SMITH, Jr.

-:O:-

The above stated Case having come on to be heard this day under the agreement of the parties thereto that a Decree may be rendered at this the first Term of said Case, and that any issue of fact arising therein may be decided by the Judge, without the intervention of a Jury, and it appearing to the Court that service has been made upon all parties at interest, and that all parties to the Case have entered into the Consent above referred to as to having said Case heard at this Term without a Jury, the following Decree is rendered in said Case:

It is considered, Ordered, Adjudged and Decreed by the Court:

1. That the property described in Exhibit "C" of Plaintiff's Petition was the property of Wm.M.Riley at the time of his death, and that upon his death the title to said property vested in Elizabeth A.Riley, Gulielma E.Riley (now Smith), and Frances M.Riley, afterwards Barnwell, share and share alike, and that upon the death of said Frances M.Barnwell, her share by virtue of a marriage settlement vested in her son, Edward W.Barnwell: and that the persons now entitled to the estate of William M.Riley are the Plaintiff, Gulielma E.Smith, and the Defendants



Edward W. Barnwell and Archibald Smith, as Executor of Elizabeth A. Riley deceased, each being entitled to an undivided one-third interest in said property.

2. The Defendant Archibald Smith is hereby appointed a Commissioner of this Court, and is directed to sell either at private or public sale all the property described in Exhibit "C", and all other property of the estate of Wm. M. Riley that may be hereafter found, and after paying the expenses of the sale, and such costs as may be hereafter directed to be paid, shall divide the remainder of the proceeds between Guilielma E. Smith, Edward W. Barnwell and Archibald Smith, as Executor of Elizabeth A. Riley, share and share alike; provided, that upon all parties consenting, said property, or any part thereof, may be divided in kind between them, upon such valuations as may hereafter be agreed upon by them.

3. It is further Decreed, That Archibald Smith, as Executor of Elizabeth A. Riley, may from time to time as he sees proper sell either at private or public sale any portions of the property mentioned in Exhibit "B" of Plaintiff's Petition, and any other property of the estate of Elizabeth A. Riley, from whatever source derived, and reinvest the proceeds in other property, such as in his judgment may be to the best interest of the estate, and hold the same subject to the Trusts created in the Will of Elizabeth A. Riley, and subject to the further provisions of this Decree.

4. It is further Decreed, That, under the Will of said Elizabeth A. Riley, Edward W. Barnwell is entitled to the income on forty per cent. of the estate of said Testatrix, during his natural life, and that Guilielma M. Smith, her husband, Archibald Smith, are entitled jointly during their joint lives, and the survivor during his or her life, to the income on sixty per cent. of the estate of said Testatrix; but in estimating the said sixty per cent., the House and Lot in Roswell, Georgia,

given to Gulielma E. Smith by said Testatrix during her life time, shall be accounted for as an advancement on said sixty per cent.

5. It is further Decreed, That it is necessary that the whole of said estate shall remain in the hands of the Executor, or shall be placed in the hands of a Trustee or Trustees to protect and preserve the same for those entitled to said estate after the death of those entitled to the income for life, as set forth in the preceding item of this Decree.

6. It is further Decreed, That the intention of said Testatrix may as well be carried out by said estate remaining in the hands of the Executor as in the hands of Trustees.

7. It is further Decreed, That such real estate as ^{it} is not considered advisable to sell, shall be divided by the Executor, with the concurrence of Gulielma E. Smith and Edward W. Barnwell, into two portions, in the proportions of forty to sixty, and the forty per cent. delivered to the possession of the said Edward W. Barnwell, and the sixty per cent. to the said Gulielma E. Smith and Archibald Smith.

8. It is further Decreed, That when said Executors shall sell as hereinbefore provided any of the property of said estate and reinvest the proceeds in real property, that said real property shall be delivered to the said Edward W. Barnwell and Gulielma E. Smith, and Archibald Smith, in the proportions above provided.

9. It is further Decreed, That said Executor shall invest all funds in his hands or that may from time to time come into his hands, which are not invested in real property, into such class of personal property as may in his opinion be for the interest of the parties entitled, and shall pay over forty per cent. of the income thereof to Edward W. Barnwell, and sixty per cent. of the income to Gulielma E. Smith and Archibald Smith.

10. The intent and purpose of this Decree is that the Executor

shall so deal with the property of the estate of Elizabeth A. Riley as as the same be divided into the portions of ^{the} forty and sixty per cent., as directed in the Will, and the said portions may be either income earning real property or income bearing personal property, as the respective parties may desire, and that those parts of the respective portions which consist of real property may be delivered to the possession of the respective parties, but the respective portions of personal property shall remain in the possession of the Executor, who shall pay the annual income thereof to the parties entitled.

11. It is further Decreed, That upon the request of Gulielma E. Smith or of said Edward W. Barnwell, that said Executor may convert the real property delivered to them in ^{to} personal property, or may convert the personal property into real property: the real property in each case to be delivered into their possession respectively, but the personal property to always remain with the Executor, as heretofore provided.

12. Whenever it becomes necessary to have a sale to carry out the provisions of this Decree, such sale may be either public or private, as may seem best to the person authorized or directed by this Decree to make the sale, and if a public sale is had it shall be before the Court House, either in Athens, Ga., or in the County where the property is located, as may seem best to the person authorized by this Decree to make the sale, and the same shall be advertized once a week for four weeks in the newspaper of the County where the sale is had in which the Sheriff's ~~sales~~ of the County are published. The terms of the sale shall be determined by the person making the sale, and notice of ^{the} same shall be given in the advertisement.

13. After such sales and reinvestments shall have been had as will place the property of the Estate of Elizabeth A. Riley in a condition

where the final division can be had with the two shares of forty and sixty per cent. provided by the Will, and the parties entitled to said shares, or either of them, shall desire their share taken out of the hands of the Executor and placed in the hands of a Trustee, they are authorized to apply to this Court for that purpose, either in term or vacation, and this Decree shall be kept open for such purposes.

14. This Decree shall be kept open for the passage either in term or vacation of any Orders or Decrees that may be necessary or proper to carry out the provisions of this Decree, or that may be authorized or proper under the Pleadings in this Case.

15. The sales authorized hereunder may be from time to time, as the parties authorized to make them may deem best, but all sales shall be reported to the Judge within sixty days after they are made, for record by the Clerk on the Minutes.

16. The Executor is Ordered to pay out of the Assets of the Estate of Elizabeth A. Riley the following costs and expenses:

"A". The Court Costs of this Case.

"B". The fee of Howell Cobb, Attorney for Plaintiff, One Hundred and Fifty Dollars.

"C". The fee of Erwin & Cobb, Attorneys for the Executor, One Hundred and Fifty Dollars, and such other Costs and expenses as may from time to time be ordered by the Court.

Decree entered and signed this 18th day of December, 1895.

N. L. HUTCHINS, Judge
Superior Courts, Western Circuit.

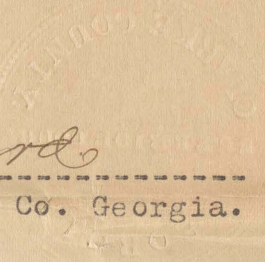
GEORGIA, CLARKE COUNTY:

CLERK'S OFFICE, SUPERIOR COURT.

I, Elmer J. Crawford, Clerk of the Superior Court of Clarke County, Georgia do hereby certify that the above and foregoing pages of type-written paper contain a full and correct copy of Decree, in the case of ~~Gu~~ Gullielma E. Smith, et al., vs. Archibald Smith et al., October term 1895, as appears of record, on the Minutes of said Court, Book 33, page 569.

WITNESS my official signature and the seal of said Court.

This 12th, day of January 1911.


E. J. Crawford

Clark Supr. Court Clarke Co. Georgia.

