James G. Smith vs. Smith
Chancery Suit # 204

BILL (Jan. 1858) To the Hon. John W. Tyler Judge of the Circuit Court of Fauquier ... Your Orator James G. Smith saith that John Smith his Grandfather died in the aforesaid County in the year 1811 ... testate ...possessed of a large real and personnal estate which he disposed of k..

Your Orator further saith that the said John Smith did by the aforesaid will, among other things give and bequeath to his son John Puller Smith two slaves named Hannah and Rachael her youngest child and their further increase In Trust for the sole use and benefit of his beloved daughter Sally and her heirs forever, and to no other interest whatever his meaning being that the said slaves were not to be disposed of for any purpose but to remain with their increase in trust for the benefit of his said daughter Sally and her heirs forever.

Your Orator further saith that the aforesaid Testator did by his will also give and bequeath to his son John Puller Smith, after the death of his wife Peggy a negro girl Vina, and also one fifth part of all his remaining slaves and one fifth part of all his personal property after the death of the said Peggy in Trust to the sole use and benefit of his daughter Sally during her natural lifeand after her death to her legal representatives and their heirs forever.

Your Orator further saith that letters executorial were granted to the said John Puller Smith, he having given bond and security according to law ... that he did proceed in the performance of his executorial duties ... and at proper times did possess himself of the slaves aforesaid, their increase and other slaves acquired in lieu of them, and the other personal property, in his character of Trustee and as such did hold them during his life. After his death your Orator has been informed and therefore avers that other Trustees were appointed in his place, and that the succeeding Trustees John P. Smith and Joseph B. Smith sons of the said Sally Smith did under take the durties of Trustees and as such held the slaves, their increase and the property aforesaid, for the uses and trusts appointed in the will of the Testator John Smith.

Your Orator further saith that Sally Smith for whose use all the slaves aforesaid and their increase and the other personal property were held by the Trustees aforesaid, died on or about the ____ day of September AD 1857 leaving

as her heirs, and representatives Your Orator James G. Smith, John P. Smith, Joseph B. Smith, Margaret P. Ball wife of James T. Ball, both of whom reside beyond the limits of Virginia, Elly W. Smith and Sally Smith now Sally Davis wife of George W. Davis, that by her death the trusts created by the will have expried, and that they property bequeathed is now a subject of division among the heirs and representatives aforesaid or their assignes.

Your Orator also saith that the increas of slaves has been alrge, that the descendants of Hannah and RAchel are about thirty in number, but that some of them have been sold without lawful authority by John P. Smith and Joseph B. Smith, the former having sold Jane a desc. of Hannah for the sum of $250 or about that sum, and the latter having sold SPencer a child of Hannah for the sum or about the sum of $1175 and that they are severally liable to the coheirs and rep. of Sally Smith for the purchase money.

Your Orator further saith that there are many other slaves ____ HAnnah and Rachel and their desc. or increase liable to a division that Vina the slave mentioned in the second clause of the will of John Smith above cited had children named Jane and HArriett that Jane is now living and that Harriett was sold and that other slaves were substituted for her, named Ralph, Daniel, Tom, Charles, Sarah and Mary, and that Sarah has many children, and Mary several children, and that all of them constitute a part of the Trust property created by the will of the aforesaid John Smith for the use of his daughter Sally Smith and her heirs and rep., and that besides the slaves above named as substituted for Harriett a road waggon and four horse in addition were transferred in trust in lieu of Harriett and to be held for the same uses.

Your Orator furhter saith that other slaves held in trust under the will of the said John Smith than those above stated to have been sold, have been sold either by John P. Smith or Joseph B. Smith, that the said John P. Smith sold a slave named Henry for the sum of .. $1136 and a slave named Daniel for the sum of $1100 and that Joseph B. Smith sold a slave named ANDREW A CHILD of Agg who was a child of Hannah for the sum of about $800, and that John P. Smith also sold a slave named George for the sum of ... $550. ... that they be made accountable for the slaves sold ... The said John P. and Joseph B. Smith alledge on their part that the proceeds of some of the slaves sold by them were applied to the purchase of a tract of land containing about one hundred acres adjoining a tract called the Mill Tract, and that having made this application, the parties intrerested must receive the land in lieu of the slaves or their proceeds. From this proposition the COmplainant dissents and asserts that the said John P. and Joseph B. Smith are tobe held accountable for the proceeds of the slaves sold by them respectively in the final division of the slaves and their increase,

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derived from the will of the Testator John Smith.

Your Orator further saith that the slaves above named or referred to are held under different clauses of the will aforesaid, that some of them are held under the first clause citedin this bill and that some of them are held under the second clause cited in this bill, and that they came to the hands of the Trustees at different times, some of them shortly after the daath of John Smith the Testator, some of them constituted a part of the portion bequeathed by him to his widow during her life, and were surrendered by her in her lifetime, for division among her children who were entitled to them in remainder, and some of them were received into possession of the Trustees after the death of the widow Peggy Smith. This Complainant cannot distinguish all the slaves by their names which are held under the one of the other of the two clauses of the will above referred to, and moreover alledges that there were many slaves in the possession of Sally Smith at the time of her death which were held under neither clause of the will, to which she had an absolute ritht and title, that ___ it is difficult for him to divide the slaves into three classes, and to disignate them by their names and he asks that proper enquiries may be instituted for the classification of the slaves, in order that the rights and claims to them may be fully and justly determined.

Your Orator further saith that it is very expedient to effect a division of the slaves and all other property liable to the Trusts of the will of John Smith, that there are between fifty and sixty slaves, that some of them are old, that many of them are young and require aid and personal care, that there is now no person who has complete authority to govern them, hire them out or otherwise dispose of them; that they are dispensed, that they have not been hired out and that to feed and clothe them is not only an _____ but a burden, and that there is danger of serious loss from expenses, and elopement, that an attempt has been made by some of the claimants to make a friendly division of them which did not succeed, that in this attempt your Orator was not a party; that such a division _____from not only _____ but unattainable, and also unsatisfactory, that nevertheless some of the parties insist upon it although this Complainant dissests from it and has never heretofore consented to it.

Your Orator further alledges that the parties above named in this Bill, are the heirs and distributees of Sally Smith, and that he has heard, believes and therefore alledges that Robert E. Scott is an assignee in part or in toto, of Joseph B. Smith, for the slaves and other property above named, and that for the ascertainment of his portion or interest, as well as that of the portions or interests of all the heirs and distributees of Sally Smith, the aid and interposition of a Court of Equity is not only fit and proper, but is absolutely necessary ... Your Orator _____ its aid, and prays that John P. Smith, Joseph B. Smith as Trustee and individuals Robert E. Scott, James T. Ball and Margaret P. Ball his wife, Billy W. Smith, George W. Davis and Sally Davis his wife may be made defendants to this Bill, and that they and each of them may be made to answer the same ... that some person or persons may beappointed by the Court to take possession of the slaves and other Trust property ...

Exhibit A: Will of John Smith, made 10 May 1806; proved 23 Sept. 1811, by oaths of John Tucker and Charles Marshall, witnesses (A. Sangster was also a wit.) Provisions: 1) all debts to be paid 2) to my son John Puller Smith, Hannah and Rachael her youngest child and their future increase - In trust for the sole use and benefit of my beloved dau. Sally and her heirs forever and to no other intent whatever ... to said dau. Sally her choice of one bed and furniture and a horse to be valued at $100, ... 3) to my beloved son James Whitacre Smith 2 Negroes named Jack Fox and Hailey together with their future increase to him and his heirs forever, .. his second choice of a bed and furniture and a horse to be valued at $100 ... 4) Grandson Jacob Thomas Williams after the death of my beloved wife a bed and furniture with a horse and saddle to be valued at 25 pounds ... 5) all the rest and residue of my estate both real and personal of every kind or nature I give and devise to my beloved wife Peggy during her natural life. 6) after her death, to my son John Puller Smith .. a lot or lease of land in Leeds Manor known by the name of JOhnstons Lot supposed to contain 200 acres also one fifth part of all my slaves not before devised together with one fifth part of all my personal estate. In trust nevertheless for the use and benefit of my dau. Lucy Farrow for and during her natural life and after her decease to be equally divided among her legal representatives ... 7) son John Puller Smith, after death of wife Peggy, a lot or lease of land in Leeds MAnor purchased of James Hefflin supposed to contain 100 acres, also a negro girl Vina to be taken out of the slaves after the death of wife and before any division of the residue of my slaves not before bequeathed is made, also 1/5th part of all my remaining slaves and one fifth part of all my personal property .. In trust however to the sole use and benefit of my beloved dau. Sally during her natural lifeand after her death to her legal rep. ...

8) to my dau. Margaret Downing Hughes and her husband Thomas Hughes and their heirs forever after the death of my beloved wife all my moiety of the lease of land lying in Leeds Manor purchased in partnership with the said Thomas Hughes from JOhn H. Ferguson except my moiety of the Mill and five acres of land adjoining the mill also one fifth part of all my slaves not before bequeathed and one part of all my personal estate ...
9) after the death of my wife .. to my son John P. Smith and his heirs forever my moiety of the mill purchased from John H. Ferguson and five acres of land adjoining thereto to be laid off in such a manner as my said son may direct - 1/5 part of slaves and personal property
10) sons, John Puller Smith and James W. Smith and their heirs forever .. to be equally divided bet. them the Lott or Lease of land in Leeds Manor purchased of Francis Triplett, also the lot purchased of John Jones, also the lot purchased of William Hughlett and if my said sons should disagree in the division or an equal division all circumstances considered cannot be made then my will and desire is that the lots aforesaid should be sold by my executors and the money be equally divided between my sons aforesaid. Son James W. Smith and his heirs: 1/5th of slaves & 1/5th of personal estate.
11) if any account is brought against my estate by Thomas HUghes which shall be allowed by my executors or estab. by law .. that each of my children except Margaret Hughes shall received out of my estate before any division is made as much money as the aforesaid account or claim of the said Thomas Hughes ...
Exors: sons John Puller Smith and James W. Smith.
John P. Smith, one of the executors therein named who made oath & together with Isaac Henry, John Puller and James Edmonds, his securities entered into bond ... cert. is granted him for obtaining a probate ...

Answer of John P. Smith (Note: not the above named Exorc, but his nephew, sonof Willis G. and Sally (Smith) Smith)

Admits to the facts of the Bill of James G. Smith ... that he is thegrandson of John Smith (d. 1811) and son of Sally Smith who died about the 24th of November 1857 intestate ... leaving slaves, etc. a list of which is attached (Note: not found) from which it will appear that if the descendants of slaves Hannah and Rachel embracedby the first item of said will she left
20, two having been sold in the life time of said Salley one Spenser sold by Joseph B. Smith .. in the year 1836 for $1175 and the other Jinney sold by reppondent in 1848 for $250 and that if the desc. of slave Vina and the other slaves and their descendants which came to the

said Salley Smith in virtue of the 6th Item ofsaid will there were in her possession at the time of her death thirty,four having been sold in the life time of said Salley Smith as follows To Wit Andrew sold by Defendant Joseph B. Smith about the year 1851 or 2 for $800 Henry sold by Respondent about the year 1854 for $1136, Daniel sold by same about the year 1856 for $1100 and George sold by the same about the year 1846 or 7 for $550. Respondent says that he sold Jinney by the direction of the said Salley Smith the said slave having been tried by the County Court of Fauquier for Murder and although acquitted of the chargesuch was the conviction of her guilt in the neighborhood of the residence of said Salley Smith that she could not with safety be carried back to her home and respondent sold her in the town of Alexandria for the price stated and she has since died. Respondent paid an attorney for her defence $25 and $15 more expenses of sale &c and paid the balance over to his mother or rather applied the same agreeably to her direction to the payment of claims upon which defendant Joseph B. Smith was confined in the jail of Rappahannock County. Respondent sold George by direction of said Salley Smith and by like direction applied the proceeds of sale to the payment of an execution of Thomas Hughes in whic h said Salley Smith was bound as security for said Joseph B. Smith and the balance by like direction applied to the payment of an execution in the name of Hudnall in which she was in like manner bound as security for said Joseph B. Smith Respondent sold Henry and Daniel by like direction of said Salley Smith both of them having run away having paid $25 expenses in revovering Henry and $300 expenses in recovering Daniel and other slaves who ran away at the same time. The proceeds of sale of these two slaves respondent after deducting the expenses aforesaid applied to the payment of the purchace maney of certain real estate costing about $6000 which said Salley Smith purchased of which she died seized and which has descended to her children in coparcenary Respondent alledges that he has advanced towards the payment of the purchase money of said real estate other sums of money over and above the proceeds of the sales of said negroes

to a large amount. That he holds the bonds for portions of said purchase money of the real estate and insists that if credit for the proceeds of the sales of said slaves, Henry and Daniel shall not be allowed him in the division of slaves that he is entitled to recourse to the said real estate for his indemnity.

Respohdent says that the said Joseph B. Smith applied the proceeds of Andrew sold by him as aforesaid to the part payment of the purchase money of said real estate. In relation to the proceeds of the sale of Spencer said Joseph B. Smith on the 19th August 1836 delivered to said Salley Smith paper herewith exhibited (marked B) as a part of this answer being an acknowledgment under his hand of his responsibility to said Salley Smith for $1100 being the balance of said sale of Spencer after deducting perhaps $75 for expenses the said slave having run away. Afterward and in part payment of said sum of $1100 said Joseph B. Smith sold and delivered to said Salley Smith negro woman Clarissa named in the bill of sale from James W. Smith to him herewith exhibited as a part of this answer (marked C) for the price of $300. He had bargained with said James W. Smith for another slave Mahala named in said bill of sale and intended to sell her also to said Salley on same account for $100 but said James W. Smith never delivered her and said Salley Smith never got possession of her. The said Joseph B. Smith also sold and delivered to said Salley Smith on same account negro man Ben at the price of $650 said Joseph B. Smith had purchased said negro man Ben of one Edward Smoot and the bill of sale from said Smoot to said Joseph B. Smith is filed in a suit in Chancery lately depending in the Circuit Court aforesaid to which reference is hereinafter made said slave Clarissa remained in the possession of said Salley Smith claimed by her as her property up to about the first of the year 1857 when the said Joseph B. Smith without any lawful authority posessed himself of said slave Clarissa and her five children, Melinda, Dennis, Cornelius, Alice and Jack Fox born to her after the purchase by said Salley Smith as aforesaid and at the time of her death held them and now holds them claiming them as his absolute property and denying his liability to account for said slaves in the division whether he claims that said Salley Smith never had title to them or that he purchased them from her or that she gave them to him respondent does not know but insists if he claims to have purchased them he shall be required to prove the contract if purchase and payment of the purchase money. If he claims them as a gift from said Salley that he be required to prove it in which case respondent insists he must account for said slaves before he can come into the division of slaves embraced by the first Item of the will aforesaid, Respondent begs leave to make reference to a suit in Chancery lately depneding in the Circuit Court aforesaid in the name of said Salley Smith against Andrew Barbee and especially to the deposition of said Joseph B. Smith and the bill of sale from Edward Smoot aforesaid therein filed and reference is also made to the of Detimus lately depending in said Court in which said Salley Smith was Plaintiff

and said Andrew Barbee was defendant the records in each of which causes respondent asks may be seen and inspected by the Court and taken as parts of this answer. Respondent insists also that said Joseph B. Smith shall be held accountable in the division of said slaves - derived under the fi4st Item of the said Will for the sum of $150, the balance of the sale of Spencer, afther the sale of Negroes Classia and Ben. Ben was in the possession of said Salley Smith at the time of her death Both of the suits aforesaid had reference to said slave Ben.

Respondent exhibits as a part of this answer exhibit (D) a copy of a deed of trust executed by Joseph B. Smith and respondent to John P. Phillips to secure a debt due to Alexander Baker a bond for $1565.71. This bond evidenced a debt due from said Joseph B. Smith alone and responded united in the bond as security only for said Joseph B. Smith the said deed of trust conveys. A Negro woman Bibby and children declared in the deed to be the property of respondent and also the reversionary interest of said Joseph B. Smith in the slaves held by his mother Sally Smith for life. The said debt was paid off by respondent except about $100 out of his own means the said Negro woman and children having been sold by respondent to said Alexander Baker for $1200 in part payment of said bond Respondent was induced to sell his own slaves for the purposes aforesaid to prevent the sacrifice that would ensue if the said reversionary interest were subjected to sale Respondent insists that he as security having paid the said debt secrued as aforesaid is entitled to be substituted to the rights and securities of the creditor as against and from the principla debtor and that the reversionary interest of said Joseaph B. Smith in and to the slaves held by said Salley Smith for life should be subjected to the repayment of the monies paid by respondent upon the bond aforesaid and respondent prays that he may have as full and adequate relief in the premises as he would be entitled to upon a cross bill ...

John P. Smith

15 April 1858. Sworn to before Richards Payne, J.P.

Respondent has neglected to state that Civty one of the slaves named in the list as one devised under the 6th Item of the will was about the year 1837 delivered by respondent with the assent of said Salley Smith to defendant James T. Ball and by him carried to Missouri in whcih state he now holds her.

The Separate Answer of Joseph B. Smith to the bill of complaint of James G. Smith ... This respondent ... says that he admits the will of John Smith ... he admits that under that will the mother of this respondent Sally Smith became entitled to and was posses of sundry slaves which with the increase thereof at her death numbered about fifty one and he believes the names are correctly set forth in the answer of this respondant's codefendant John P. Smith. He also admits that the said Sally Smith departed this life on or about the 28th of Nov. 1857 intestate and that the said slaves together with the real estate and certain other personal property of which she died possessed remain for distribution amongst her children ... admits that after the death of John P. Smith the trustee named in the said will of the said John Smith that this Respondent and the said codeft. John P. Smith were cotrustees in his place, but the said slaves were held by and under the .... of the said Sally Smith without the interference of the trustees as such and were managed and employed by her through agents appointed by herself. For a long term of years this Respondents said codeft. John P. Smith resided with his mother and had the chief managment of her affairs.

This respondent is not advised whether the said Sally Smith held a life estate in a part only of the said slaves and if that becomes a question material for discussion in this cause, he is advised that it can only be dteremined upon a construction of the will which is exhibited with the complts. bill. In the lifetime of the former tr ustee some of the said slaves were sold and others wer bought and substituted in their place .... 17 April 1858 ...

On 19th April 1858 - George W. Davis gave his answer ... ... content to submit his rights to the Court, neither he nor his wife Sally ever received any portion of said slave property ...

John Q. Marr, Sheriff was appointed admr. of the estate of Sally Smith, dec'd. ... many of the slaves are hired out ... and is willing to have the estate settled in any way the court orders.

John Thomas Smith married Polly Smith and has removed to Harrison County Va.

The Court appointed Thompson M. Hirst, Benjamin F. Rixey, James M. Morehead and Edward P. Templeman to divide the slaves among the heirs. James T. Ball and wife to be charged with the slave Clarissa and her children. And the Court doth further A.O.&D. that John P. Phillips, Robert E. Scott, Samuel Chilton, Rice W. Payne, Benjamin H. Shackleford & Inman Horner, any one or more of them who will serve to make sale of the Vernon Mill Property, containing about 140 acres of which Sarah Smith died seised & possessed

To be advertised in a paper in Warrenton for 30 days ... September 1859 ..

The 52 slaves were appraised at $41,100.00. They were allotted to John T. Smith, JAmes G. Smith, James T. Ball, John P. Smith, George W. Davis and Joseph B. Smith.

Report of land sale (19 April 1860) ... held 27 December 1859 ... George W. Davis became the purchaser at $30 per acre, he being the highest bidder ... two lots ... one containing 96 a. 3 r. 19 p. and the other, by survey made by Geo. W. Norris, by boundaries under which it has been held for many years and indicated to him by parties acquainted therewith, containing 41 acres, but during the present term of the Court he has re-surveyed the last mentioned lot, by an old survey in deed from Dixon to Morehead, former owners, making only 34A 1 R 28 P cutting off nearly seven acres of the most valuable part of said lot. The purchaser however has settled by the survey first made by Norris as above mentioned, with the understanding, that anorther survey may be made and any errors corrected. In all 137 A. 1 R. 19 P. off this quantity embraced in an incorporated graded road running through sd. land: 2A 1 R. 25 P. $30 per acre amounts to $4063.87, 10 per cent cash payment is $406.38. R.E. Scott, Comm'r.

The Court confirmed the division of the slaves made by the appointed Commissionersand ordered John Q. Marr to deliver to each heir their allotment.

On 4 April 1867 the case was dismissed. The case was revived in November 1868, mostly for the settlement of the sale of Vernon Mill and distributing the funds of the various commissioners, some of whom were dead: John Q. Marr and R. E. Scott. By 1871 B. H. Shacklefor was dead, and his accounts had to be settled by his widow, Rebecca. Joseph B. Smith was charged with a large store account by George W. Davis, plus a blacksmith's (Nimrod Glascock) account of J. B. Smith, which Davis had paid. The distributees in August 1871, to the funds Davis' paid the Comm'r of the Court for Vernon Mills, were: James G. Smith, Joseph B. Smith, John P. Smith's admor, Margaret P. Ball, Mary W. Smith (Polly), Sally A, wife of Geo. W. Davis.

In April 1873 it was decreed by the Court that Comm'r. Rice W. Payne should execute a deed to George W. Davis for the peoperty.

VERNON MILLS

Deed Book 66, p. 30 - 22 June 1874:

Rice W. Payne, Special Comm'r. in 'James G. Smith vs. Smith' (#204) to George W. Davis ... two lots of land ... Lot 1 - 96 acres 3 roods 19 perches. Lot 2 - 41 acres, deducting 2 a. 1 r. 25 per. taken up by an incorporated road, survey of 19 April 1860 ... known as the Vernon Mill property ...

Deed Book 108, p. 195 - 15 April 1910:

W. Golder Davis, John M. Davis, Wm. Arthur Davis ... to George Beauregard Davis ... under will of George W. Davis ... all their title in Vernon Mills ... I give to my son George Beauregard Davis, 1st a life interest in all that part of the mill lot at Vernon Mills, Fauquier CO., Va., lying west of the graded road, containing 32 acres on this is the mill, barn, carriage house, corn house, old store building, dwelling, new store, dairy, smoke house, icehouse, kitchen and other houses. AFter the death of my said son George B. Davis (and henot having any childrenthen the property shall go to the said George B. Davis' brothers and their children (W. B. 44, p. 374)

Deed Book 154, p. 390 - 8 Nov. 1943

W. Golder Davis, unmarried, to Golda Davis Pollock .. $2500 .. 30 acres on west side of road, Rt. 647, from Marshall to Jerrys Shop .. formerly occupied by George B. Davis ... [brothers]

Fauquier County Marriage Bonds:

John Smith to Margaret Allen (dau. of Joseph), 24 Oct. 1788.

Willis G. Smith to Sally Smith, 2 Feb. 1807, John P. Smith, bondsman. (Note: Bible records that they were married in 1805)