

TWO COURT RECORDS FOLLOW:

1. Halifax County Superior Court – November 25, 1907
2. North Carolina Supreme Court - February 19, 1908

JUDGMENT DOCKET OF THE HALIFAX COUNTY SUPERIOR COURT

665

Name of Attorney: ME Daniel for plaintiff and SG Daniel for defendants

November 25, 1907

Case: John Olin Heptinstall

vs

ME Newsome and AS Newsome, his wife, DW Newsom, AH Newsome, ME Newsome Jr. JC Williams, and Nina Williams, his wife, Blanch Newsom, EH Newsome, Helen Newsome, the last named living under the age of 21 years, Mrs. EA Jackson, JF Jackson, JM Jackson, JM Jackson, Lula H Jackson, Neill McRae, Ellen McRae, his wife, JA Cutts, and Olin Cutts, his wife, Carrie Heptinstall, Nancy Heptinstall, JW Heptinstall, and Hannah Heptinstall, the last two names being under the age of 21 years. The said EH Newsome, Helen Newsome, JW Heptinstall and Hannah Heptinstall defending herein by their duly appointed guardian ad litem SG Daniel.

Judgment:

The cause coming in to be heard at this term of the court before his honor Judge WR Allen and being heard upon the following pleadings and when argument of counsel. Now in motion of WE Daniel Atty. for the plaintiff, it is ordered adjudged and decreed:

1. that Cornelia B Heptinstall, the widow of John W Heptinstall, dec. have an estate in fee to that parcel of the real estate referred to in item 1 of the said John W. Heptinstall, dec. to wit. The home where she now lived with all the out houses and premises embracing the peach and apple orchards and a life estate in that part of the real estate mentioned in item 1 of said last will and testament as follows: the balance of the land between the line of Col WA Johnson and Mr. ME Newsom and the track of land on the south side of the road leading from my corner above Perry's store to Warrenton containing 60 to 70 acres, with remainder in fee to the heirs at law of the said John W. Heptinstall, the plaintiff, John Olin Heptinstall, and the defendants Mrs. EAC Jackson and Mrs. AS Newsom.
2. that the plaintiff, John Olin Heptinstall takes an life estate in fee simple in that certain real estate described in item 4 of said last will and testament of John W Heptinstall, dec, as follows: My old residence where he now lives, the store house, and all the other out houses and 400 acres of land drawing the lines he may select provided he shall not go more than halfway from his house to the Jackson place and not nearer north or south east the old mill path or nearer the Murphy place, than the said old mill path until the road is reached and then if desired, the road can be followed to Ed Carter's and his line to the old road and down said road to Morris line."
3. that Cornelia B Heptinstall, the widow of the said John W. Heptinstall, dec. takes an estate for life in that portion of the real estate referred to in the said last will and testament of John W. Heptinstall dec as loaned to her during her natural life with remainder in fee in the share of the said Cornelia B Heptinstall, thus loaned to her to the heirs at law of the said John W. Heptinstall, dec. to wit: the plaintiff John Olin Heptinstall and the defendants, Mrs. EAC Jackson and Mrs. AS Newsom.
4. that so much of item 5 of the said last will and testament of John W. Heptinstall, dec. which says that the real estate mentioned shall not be sold or mortgaged by the grandchildren of the said John W. Heptinstall, dec. is void and of no effect. It is further ordered, adjudged and decreed that the plaintiff recover of the defendants the costs of the action to be taxed by the clerk

WR Allen
Judge Presiding

HEPTINSTALL v NEWSOM et al

February 19, 1908

WILLS-ACTIONS TO CONSTRUE-EQUITY-ADVISORY JURISDICTION

An action for construction of a will, brought by a devisee, not against some person claiming an estate or interest in the tract devised to him, but against the other devisees, and in the interest of all, to settle and determine all their respective rights arising under the will in presenti and in future, in which action the executors as such have no interest, is not within the advisory jurisdiction of equity.

[Ed. Note.-For cases in point, see Cent. Dig vol. 49, Wills,1666.]

Appeal from Superior Court, Halifax County; WR Allen, Judge

Proceedings by John Olin Heptinstall against ME Newsom and others for construction of the will of John W. Heptinstall, deceased. Form the judgment, defendants appeal. Dismissed.

Manning & Foushee, JP Pippin and RO Everett, for appellants. EL Travis and WE Daniel for appellee.

BROWN, J. this appears to be an action brought by the plaintiff, on of the devisees of the testator, against such of the other devisees as are in case, for the purpose of obtaining a construction of the will as to the devisees of real estate and to determine what estates some of the devisees take. While we readily concur in the correctness of the decree of the learned judge construing the will in all its parts, we cannot recognize the regularity of this proceeding, nor the jurisdiction of the court to entertain it. It seems to be predicated upon the idea that a court of equity has a sweeping jurisdiction in reference to the construction of wills, which, under the authorities, is an erroneous one. *Tyson v. Tyson*, 100 NC 368, 6 SE 707; *Cozart v. Lyon*, 91 NC 282. The jurisdiction in matters of construction is limited to such as are necessary to the present action of the court. It will not undertake to construe a devise in a proceeding of this character; for the rights of devisees are purely legal, and must be adjudged when a cause of action arises. The advisory jurisdiction of courts of equity are primarily confined to trusts and trustees, which includes executors as far as their rights powers, and duties under the will are concerned. *Alsbrook v. Reid*, 89 NC 151; *Little v. Thorne*, 93 NC 69. As is said by Judge Pearson, in *Taylor v. bond*, 45 NC 16: We can see no ground, upon which to base jurisdiction, to allow executors to ask the opinion of the court as to the future rights of a legatee; for instance, "Who will be entitled, when a life estate expires?" "When property is given to one for life, with a limitation over, does the first taker have the entire interest by the rule in *Shelley's Case*?" Or, "What would be the consequence of a supposed state of facts that may hereafter arise?" True, these are matters of construction, but the questions cannot now be presented, so as to be settled by a decree. A declaration of opinion would be merely in the abstract, until existing rights come in conflict, so as to give the court a subject to act on." We were inclined to think that the jurisdiction might be founded upon a liberal construction of the act of 1893 (Revisal 1905, 1589); but upon consideration we find it cannot. It is not an action brought by the plaintiff, John O. Heptinstall, against some person claiming an estate or interest in the tract devised to him, but is a proceeding brought evidently in the interest of the several devisees of parcels of land, to settle and determine all their respective rights arising under the will, in praesenti and in future, in which the executors as such have no interest. The action and the appeal are dismissed.
Dismissed.