

No 4947 Equity

part satisfaction and settlement of the shares of said decedent's estate to which, we are, as his heirs at law entitled: and to be reckoned by you as that much paid on our said shares when you finally settle said estate. Witness our hands this second day of January A.D. 1884

Test

James H. Clemons. (Filed April 25. 1884)

Scott H. Maynard  
Julia Maynard  
Peter Lugemkel Executor

Endorsed. I hereby certify

that I will execute the within order

Dennis H. Maynard  
Mortgage of Basil Maynard  
In  
Petition

No 4947 Equity  
In the Circuit Court for Frederick County  
As a Court of Equity

March Term 1884

The proceedings in this case show that Dennis H. Maynard, under a power contained in a mortgage from Basil Maynard dated July 5th 1881, sold the real estate described in said mortgage, on the 8th day of December A.D. 1883 to Nicholas H. Clemons for the sum of Three thousand six hundred dollars, which sale has been finally ratified and confirmed by this Court. That said sum is more than sufficient to pay the mortgage debt, Commissions and costs. That Basil Maynard, the mortgagor, departed this life on the 18th of October A.D. 1883 leaving a last will and testament, dated November 1876 executed in due form of law to pass real estate, and that Peter Lugemkel as the Executor named in said will, has had the same admitted to probate in due form, and has taken out letters testamentary on the estate of said deceased and entered upon the discharge of his duties as such Executor. That Scott Maynard and Juliet Ellen Elizabeth Maynard are the only children and heirs at law of said deceased, and that they are adults and reside in Frederick County. That said last will among other provisions, contains the following: "I will order and direct that when my youngest child arrives at the age of twenty one years, that my Executor sell the said real property and the residue of the personal property and the proceeds to distribute as follows, to my wife Joanna, one third and the residue to be equally divided between my son Henry Winfield Scott & my daughter Juliet Ellen Elizabeth in equal portions share and share alike"

The mortgage provides that upon a sale of the land, after paying the mortgage debt, costs Commissions and as to the balance to pay it over to said Basil Maynard his heirs or assigns. The mortgage after the ratification of the sale and the payment to him of the whole purchase money, on the 18th day of January 1884 filed his petition in this Court alleging the facts as herein set forth, and charging that said Basil Maynard was further indebted to him in the sum of thirty eight dollars and thirty six cents (\$38 <sup>36</sup>/<sub>100</sub>) and interest on a judgment which was a lien on the Equity redemption in the land sold: and that said deceased was further indebted to him on two promissory notes, one for the sum of fifty dollars and eighty nine cents (\$50 <sup>89</sup>/<sub>100</sub>) with interest thereon from May 25th 1882 and the other for the sum of forty dollars (\$40.) with interest thereon from May 7th 1880. That the deceased left little or no personal estate, and if he left any it is entirely insufficient to pay his debts.

He then prays the Court to direct the Auditor in distributing the fund, to first allow the mortgage debt all costs, expenses and Commissions thereon; secondly, the amount of his said judgment and interest thereon, and then all the other just claims against said Basil Maynard that may be duly proved and filed after he shall have given such notice as the Court shall direct, to the creditors to file their claims. On this Petition, the Court passed an order nisi and directed a copy of the petition and the Courts order to be served on the said Executor and the said heirs at law.

The copies having been duly served, the heirs at law, Scott Maynard and Juliet E. E. Maynard filed their answer, admitting the allegations of the petition and consenting to the application of the fund to the payment of the just debts of their father, and pray the Court to direct the Auditor to distribute the balance to them and that said Dennis H. Maynard Mortgagee may be ordered to pay the same over to them.

The Executor in his answer, admits the allegations of the Petition except the indebtedness on the judgment and the two promissory notes which he neither admits nor denies but leaves the petitioner to his proof in regard thereto. And he further answering contends that the surplus of said fund, after paying