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P<sup>d</sup> 3

Honorable Dan. B. Smith

Judge of the 7<sup>th</sup> District  
14<sup>th</sup> Circuit

Harrisburg  
Rockingham  
Ct. Va.

Virginia

In the circuit Superior Court of Law & Chancery of Hardy County,  
Ch<sup>s</sup> H. Green & wife Felix B. Walton & wife  
& Phebe S. Cunningham - severally } Complainants

vs  
George Cunningham the guardian } Defendants

To the Honorable Daniel Smith Judge of the said Court

Your Commissioner of said Court respectfully represents to your Honor

That having had his attention called to a case in the Court of  
appeals viz Jacksons heirs against Jacksons admors reported in 1<sup>st</sup>  
Grattan page 143 & 16 In which case the Court instructed the Com<sup>r</sup>  
to allow, as charges of a de facto guardian against his awards (as I  
understand it) a reasonable allowance for the support and main-  
tenance of the children, furnished by their mother with whom they  
lived; and reimbursed to her, in accounts paid for her and supplies  
furnished her by the administrator. Which case has been reported  
(as I am informed) since your decision in the case of Solomon Cun-  
ningham against Geo. Cunningham his Guardian in this Court  
at the last term. And the 3 cases above stated which are now in my  
hands for settlement, being precisely similar cases to the one you  
decided at the last term of this Court and their being some  
similarity between those cases and the cases of Jacksons heirs against  
Jacksons admors to which my attention has been called as before  
observed that some doubt, that some doubt has arisen in my  
mind whether it would be proper or not, to charge the wards in  
those cases now before me with their support and maintenance  
and with accounts paid for, and supplies furnished their  
mothers by their Guardian. And therefore respectfully ask your  
honor for instructions on those points in those cases - I observe  
this difference, between the cases of Jacksons heirs against Jacksons  
admors reported in the Court of appeals; and the case of Sol<sup>d</sup>  
Cunningham against George Cunningham his guardian, which  
you decided in this Court at the last term. In the first case I  
think the mother claims remuneration for the support and main-  
tenance of her children but in this I may be mistaken I have not

the case before me) and in the second the mother expressly states that she never made any charge for the support and maintenance of her children

The defendant is going on to prove by parol testimony what would be a reasonable annual charge for the support and maintenance of his wards; and insists that I should make this application to you for instructions 'as thereby the delays consequent upon the recommitment of the accounts, or the onerous expense of having alternate statements might be avoided'

Respectfully submitted

J. H. Spence M. Com.  
Jan'y 22<sup>d</sup> 1846

A copy of  
Testy

Charles Lobb C.C.

In answer to the question above submitted I have to say that the case of Jacksons heirs vs. Jackson adm<sup>r</sup> has been reported since the last Hardy Sup<sup>r</sup> Court, and we must now endeavor to conform to it; according to that decision I think it would be proper to charge the wards with a reasonable annual sum for their support and maintenance, but such charge is not to exceed the annual amount of the interest, rents, hires & other profits of the estate. In stating the account between the widow and the adm<sup>r</sup> or guardian she ought to be charged with all accounts paid and supplies furnished her for herself and the children not belonging to the administration account, and she ought to be credited by the amount charged to the wards for their support and maintenance (that support being furnished by her). - The foregoing remarks are predicated on the idea that the annual interest, rents, hires, & profits of the estate were more than sufficient to pay for the support and maintenance of the children; - but if they were not sufficient the case of Jacksons heirs vs. Jackson adm<sup>r</sup> before referred to, being a case of that sort, will show how the accounts are to be stated so that the charge for maintenance does not exceed the yearly income of the wards estate.

Feb'y 18<sup>th</sup> 1846 -

Dan Smith

Cunningham heard  
Cunningham



1846

Charles Lobb Esqr  
Clerk of the Sup<sup>r</sup>  
Court of Hardy County  
Moorefields. Va.

