

1849-005 SOUTHAMPTON COUNTY
CHANCERY PAPERS

GARDNER VS. GARDNER, EXER etal
5/1849

other surnames: Daughtrey,
Daughtrey

~~27~~ 27 22.

Gardner

v. } Papers

Gardners Exr &c

1819 May Term

Gardner

W. } Stat: Rules

Gardners Exr. &c

James Gardner Costs.

201

Jas. R. Gardner "

49

250

14 28

16.78

16.66

33 44

J

Overett Gardner

to:

- James R Gardner in his own right & as Exor. Jason Gardner dec^d. Ann Gardner and Lilly Gardner & James Gardner her husband & Caroline Susan Daughtrey.
- 1847 Nov 1st Sp^a. awarded.
- 1847 Dec. Rules - Bill filed & Sp^a. & awarded. Ret^d. Ex^d. on Ann Gardner, other Dfts. not found - New Sp^a. awarded.
- 1848 Jan. " Sp^a. ret. Not found - New Sp^a. awarded.
- " Feby " Sp^a. ret. Executed on Dfts Jas R Gardner & Ann Gardner other Dfts not found - New Sp^a. awarded. J. D. Massenburg assigned D^{ts} had taken to witness Dft. Caroline S. Daughtrey -
- " Mar " Sp^a. Ret^d. Ex^d. on Jas R Gardner. Answers of Dfts Ann Gardner, James Gardner wife & Caroline S. Daughtrey Gen. Rep: to ans^r. of Dft. C. S. Daughtrey.
- " Apr. 1st Monday - Answer of Dft. of Jas R Gardner in his own right & as Ex^r. Gen. Rep: thereto.
- " " Last Monday - Cause set for hearing as to Dfts Ann Gardner, James Gardner wife & Caroline S. Daughtrey.
- " May 5. Sp^a. made up to be tried by a Jury.
- " Nov. " Continued
- 1849 May. " final decree.

Gardner

r

} Bill

Gardner & Co

1847 December R. 10

Lilly married James Gardner. Nausumud.

To the Hon. Richard H Baker judge of the Circuit Superior Court of law & chancery for the County of Southampton.

Humbly complaining shew unto your Honor your orator ^{Ernest} Gardner, That during the year 1846 Jason Gardner the father of your orator departed this life at an advanced age and infirm both in mind & body, possessed of a considerable estate consisting of lands lying in the County of Southampton and personal property worth in the estimation of your orator about the sum of \$¹⁰⁰⁰. That at the Feb. Term of the County Court of Southampton a paper purporting to be the last will and Testament of the said Jason Gardner was produced in court and admitted to record and James B Gardner one of the Executors therein named appeared in court and qualified according to law by executing bond and giving Nelson B Gardner and Wiley Council his securities. A copy of the said paper and certificate of qualification of the Executor are herewith filed and prayed to be considered a part of this bill. That by the provisions of the said alleged will the whole property of the decedent is devised to your orator, his brother James B Gardner, his sisters Ann, and Lilly Gardner, ^{The last has intermarried with Jas Gardner} and his niece Caroline Susan Daughtrey the daughter of his deceased sister Abby who intermarried with Robin Daughtrey, who are the sole heirs at law of the said Jason Gardner. That the said Caroline Susan Daughtrey is an infant of tender years. That although

The said Jason Gardner devised his property to his heirs at law it was in very unequal proportions, and your orator regrets to state that although he lived on terms of the greatest affection with his father he made scarcely any provision for him. Your orator believes and therefore charges that the paper a copy of which is herewith exhibited bearing date the 1st day of December 1846 is not the true & valid last will & testament of Jason Gardner, and that he therefore feels bound in justice to his own rights to file this bill for the purpose of contesting the validity of the said will. Your orator further states that the property which was in the possession of the said Jason Gardner has come into the hands of James B. Gardner who has refused to deliver to your orator his just & full proportion thereof because of the said alleged will, and your orator contends that there is no such will sufficient to prevent the recovery of the said property. In tender consideration of all which and in as much as your orator is without adequate relief in the premises except in a court of Equity, where matters of this & like nature are properly cognizable & relievable, to the end therefore that justice may be done he ^{both in his own right & as Executor of Jason Gardner} prays your Honor to make James B. Gardner, ^{Gardner} Ann & Libby Gardner, ^{& James Gardner her husband} and Caroline Susan Daughtry, the last by some fit & proper person to defend her, defendants to this bill with apt & proper words to charge them ^{and that they know the allegations} - That an issue devisavit & non may be made up & tried at the bar of this court whether the paper writing a copy of which is herewith exhibited be the will

of Jason Gardner or not - That if the said writing should be decided not to be the will of Jason Gardner, your Honor will decree the land and personal estate of which the said Jason Gardner died possessed to be delivered up to be equally divided among his heirs at law - That James B. Gardner may be compelled to settle before a commissioner an account of his transactions as Executor and whatever balance may be found due on such settlement may be paid to the distributees of the said Jason Gardner, and that your Honor will grant him such other and general relief as the justice & equity of his case may require, and that the usual writ of subpoena may issue &c, and as in duty bound he will ever pray &c, may it please your Honor &c

Errett Gardner

Chambliss & Maffett

Gardner }
17 } Ensua
Gardner }

1848 April 21st

Gardner
vs
Gardner } Answer of James R Gardner in
his own right & as Exr of Jason
Gardner decd -

This Respondent saving and
reserving to himself all benefit of first exception
to the many errors & of the Complete Will. For
answer, says. That the paper referred to in the bill
was duly proven and admitted to probate by the County
Court of Southampton and your Respondent qualified
as Executor thereto - and is ready to administer sd will
according to the terms of sd will - He believes
the paper to be the true last will & testament
of Jason Gardner and therefore cannot - as at Law
he ought not to dispose of the estate differently
from the directions of the will - He has no
objection to the issue being awarded as prayed for
and having answered he prays to be honor-
ably dismissed - with his costs -
R & G.

Southampton County.

This day James R Gardner personally appeared
before me a J.P. and made oath the above
answer contains the truth to the best of his
knowledge & belief Given under my hand &
seal this 20th day of March 1848 -

Sam'l G. J.P.

Gardner
n { Answer of Infant
Gardner

1848 March Rules

The answer of Caroline Susan Daughtry
an Infant under the age of twenty one years
by James D Mapenbury her guardian
ad litem, one of the Defendants in the bill
of Complaint filed by Everett Gardner

This Defendant now and at
all times hereafter saving & reserving to her-
self all manner of benefit and advantage of
exceptions, answering by her said guardian says,
That the allegations of the Complaints bill may be
true but that she knows nothing thereof, and
this Defendant in manner aforesaid says that
she is an infant under the age of twenty one,
and that she submits her rights & interest to
the protection of the Court, and having an-
swered she prays decree to be dismissed
with her costs &c

Gardner
7 {Answer
Gardner

1928 March Rules

The joint & several answer of Ann Gardner,
James Gardner & Lilly his wife, Three of the Defen-
dants to the bill of complaint of Everett Gard-
ner.

These Defendants now and at all times here-
after, saving & reserving to themselves severally
and respectively, all manner of benefit and
advantage of exception. do, for answer to the
said bill or so much thereof as they are advised
it is material they should answer, answer-
ing say, That they believe the allegations of the
bill to be true, and that they do not object
to granting the prayer of the complaint
and having answered they pray hence to be
discharged with their costs

Ann Gardner
James Gardner
Lilly Gardner

The answer of these Defendants is received
by consent. Chambliss Shapentung atty for Compt

Gardner

& } Ex. Order

Gardners Ex. O^r

Executed by M^r

Murphy Sept. of Jacob
Barnes Sheriff

Southampton Superior Court. February Rules 1828

Everett Gardner

against

James R. Gardner in his own right and as Executor
of Jason Gardner dec^d & others.

Def.

} In Chancery

vs

On the motion of the plaintiff by counsel James D. Wapshbury
is assigned guardian ad litem to the infant defendant Caroline
Susan Daughtrey to defend her in this suit. And it is ordered that
notice be given the said guardian of his appointment by serving
him with a copy of this order.

Attest J. R. Edwards

1849-005

Chancery Papers: Gardner vs Gardner + al

5/1849

Southampton County

11
Gardner
a { Locust
Gardner & Co

To be entered
R. H. B

1848 May

Gardner

10th

Gardner & c

Deft

This day this cause came on to be heard on the bill answers & exhibits and was argued by counsel. On consideration whereof the court doth order that the following issue be tried by a jury at the bar of this court at the next term. To wit, whether the paper dated the 1st day of Decem. 1846 and admitted to probate in the County Court of Santhampton on the 15th day of Feb ~~1847~~ 1847 as the last will and testament of Jason Gardner be the last will and testament of the said Jason Gardner or not

Gardner

& } Copy Word:

Gardners Err

Southampton Circuit Superior Court November 10th 1848.

Everett Gardner

Plff

against

James R. Gardner in his own right and as executor of Jason Gardner dec^d. Ann Gardner, Lilly Gardner and James Gardner her husband and Caroline Susan Daughtrey

Defts

} Upon an issue
out of Chancery

This day came the parties by their attorneys and thereupon came a jury to wit Nath Francis, Nat Simmons, A. M. Howell, Goodwin G. Griffin, William Whitney, Joseph S. Barham, William Cobb, E. M. Bishop, William Gay, John Stephenson, William E. Gay and R. A. Crump who being elected tried and sworn the truth to speak upon the issue joined, upon their oath returned a verdict in the following words to wit "We the jury find the will dated the 1st day of December 1846 to be the true last will and testament of Jason Gardner dec^d." Which is ordered to be certified to the Clerk of the Circuit Superior Court of Law and Chancery for Southampton County sitting in Chancery -

Plffs costs.

\$ 7.93

Defts

"

14.28

Attest

Teste

L. R. Edwards Secy

Gordman

i } Scene

Gordman

To be entered

R. H. B.

May Co. 49

Gordon

May Term 1849

vs

Deane

Gardner



This day this cause came on again to be heard on the papers formerly read and the verdict of the jury rendered at November Term 1848, and was argued by counsel. On consideration whereof the Court being of opinion that the paper writing dated the 1st day of December 1846 purporting to be the last will and testament of Jason Gordon, is the true last will and testament of the said Jason Gordon, doth adjudge, order and decree that the plaintiffs be dismissed and that the plaintiffs pay the costs of this suit.

Gardner

~ } Spa. Chy
 ~ }

Gardner's Error &c

1847 December Rules

Continued out. And Garrison
 the other parties not found
 Mr. I. Magid Left
 for Laok Barnes ship

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon *James R Gardner in his own right and as executor of Jason Gardner, Ann & Filly Gardner & Caroline Susan Daughtry*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *December* next, to answer a Bill in Chancery exhibited against *them* in the said Court by *Everett Gardner*

And unless *they* shall answer the said Bill within ~~four~~ ^{two} months thereafter, the Court will take the same for confessed, and decree accordingly. And this *they* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *1st* day of *November* 184*7*, in the *72^d* year of the Commonwealth.

L R Edwards Clk

[One Copy to be delivered each Defendant.]

10.5.6

Gardner

2 } Sp^a. Chy

Gardners Exr &

1848 January Rules

W. H. Jones

50 Market St

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon *James R Gardner in his own right and as Executor of Jason Gardner dec^d*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first *Monday* in *January* - next, to answer a Bill in Chancery exhibited against *him & others* in the said Court by *Everett Gardner*

And unless *he* shall answer the said Bill within ^{*two*} ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *he* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *6* day of *December* 1847, in the *72^d* year of the Commonwealth.

L R Edwards

[One Copy to be delivered each Defendant.]

I Deliver a true copy of this notice to James
Q. Gardner Josiah P. Gay Jr

Gardner

at } Ap^l: City.

Gardner Esq.

1848 February Ninth

J. P. W. 1848

636

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of ^{Isle of Wight} ~~Southampton~~ County, Greeting:

We command you that you summon *James R. Gardner in his own right &*
as Executor of Jason Gardner. A

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the
County of Southampton, at the Rules to be holden for the said Court on the first Monday in
February next, to answer a Bill in Chancery exhibited against ^{others} *him &* in
the said Court by *Everett Gardner*

And unless *he* shall answer the said Bill within ^{*two*} ~~two~~ months thereafter, the Court will
take the same for confessed, and decree accordingly. And this *he* shall in no wise
omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON
R. EDWARDS, Clerk of our said Court, at the Court-house, the *3rd* day of
January 1848, in the *17th* year of the Commonwealth.

R. Edwards

[One Copy to be delivered each Defendant.]

C.S.C

Gardner.

to Esq Chy.

Gardners Exr &c

1848 February Rules

Executed on Ann Gard

..ner ~~Wm. Burge~~ Dept-
for Jacob Barnes

The other defendants Shifts
not found

Wm. Burge Dept-
for Jacob Barnes Shifts

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting :

We command you that you summon *Ann Gardner, Silly Gardner & James Gardner her husband & Caroline Susan Daughtrey*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *February* next, to answer a Bill in Chancery exhibited against *them & another* in the said Court by *Everett Gardner*

And unless *they* shall answer the said Bill within ~~four~~ ^{two} months thereafter, the Court will take the same for confessed, and decree accordingly. And this *they* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *3rd* day of *January* 1848, in the *72* year of the Commonwealth.

L R Edwards Clk

[One Copy to be delivered each Defendant.]

656

Gardner

to } Sp^a Chy

Gardners Exr. of

1848 March Rules

THE COMMONWEALTH OF VIRGINIA,

Ansmon D
To the Sheriff of ~~Southampton~~ County, Greeting:

We command you that you summon

Lilly Gardner & James Gardner her husband

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *March* next, to answer a Bill in Chancery exhibited against ~~them~~ ^{others} in the said Court by *Everett Gardner*

And unless *they* shall answer the said Bill within ~~three~~ ^{two} months thereafter, the Court will take the same for confessed, and decree accordingly. And this *they* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *7* day of *February* 1848, in the *72^d* year of the Commonwealth.

L R Edwards cc

[One Copy to be delivered each Defendant.]

B.S.B

Gardner

to } Sp. Chy

Gardners Exr. & P

1848 March Rules

Executed By m
Murphy Sept- of Jacob
Barnes Shff-

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon

*James R Gardner in his own
right and as Exor. of Nelson Gardner dec^d.*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the
County of Southampton, at the Rules to be holden for the said Court on the first Monday in
March next, to answer a Bill in Chancery exhibited against *him* ^{*others*} in
the said Court by *Enoch Gardner*

And unless *he* shall answer the said Bill within ^{*two*} ~~four~~ months thereafter, the Court will
take the same for confessed, and decree accordingly. And this *he* shall in no wise
omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON

R. EDWARDS, Clerk of our said Court, at the Court-house, the *7th* day of
February 1848, in the *72^d* year of the Commonwealth.

J R Edwards

[One Copy to be delivered each Defendant.]