

1861-015

SOUTHAMPTON COUNTY
CHANCERY PAPERS

GARDNER and Wife vs. COGSDALL et al

12/1861

other sURNAMES: Coggsdale,
Cogsdale

Gardner & wife
 vs 3 Deere
 Cogsdell & als

1858 May. Deere as filed. v.
 # June. Rept. & Exceptions thereto
 # July. Deere as filed.
 # Sept. Rept.
 1861 Decr. " Confon?"

To The worshipping county court of Southampton County
in Chancery sitting

Humbly complaining your orator ^{Wrial} ~~Wrial~~
Gardner and Abby his wife who before marriage was
Gardner, shew unto your courtship that in the year
1854 Emmitt Gardner of Southampton County departed
this life intestate leaving considerable estate real and
personal and leaving Mary Gardner his widow since
married to Mr. Cogdell, and Abby one of your orators
William, Falina, and Mary O Gardner his children, his
distributors and heirs at law, your Orator shew further
that this intestate left a small tract of land lying
in Southampton County estimated to contain ninety
six (96) acres which they now hold in coparcenary
with the other children subject to the will of their
Abby one of the children having married a division
of the land has now become mespary and if that
cannot be effected then a sale for a division, they
shew further that the share of each child is less
than \$300, In further consideration whereof and
inasmuch as your orator are without relief in a court
of law and are only entitled to relief in a court of
equity where such matters are cognizable they therefore
pray that William O Cogdell and Mary his wife
and William, Falina and Mary O Gardner who are infants
by some fit and proper person their guardians or others
appointed for that purpose may be made parties defendant
to this bill and compel them as full and perfect
answer make to the allegations therein contained as if
they had been therein more fully and especially
interrogated, that the court may direct a division
of the land if practicable and to the interest of
the parties and if upon report of commissioners a
sale be mespary then a sale of the said land

and a distribution of the proceeds of sale according to the rights of the parties, and that the court would grant such other and general relief the premises considered as equity may dictate and the nature of this case may require and as in duty bound your complainants will ever pray &c.

Shanda J. G.

The answer of William, Fatima and Mary R. Gardner infants by C. R. Edwards their guardian ad litem to a bill in chancery of Gardner and wife vs them & also

This defendant for answer to the said bill or as much thereof as he is advised it is material for him to answer, answering says, that he submits the interests of his wards to the care of this court whose peculiar duty it is to protect the rights of infants and having fully answered prays leave to be dismissed with his costs &c.

Shanda J. C.

The answer of W. B. Cogdell and wife to the above bill

These defendants say, that they can interpose no objection to the decree prayed for in the bill as it does not conflict with their rights, and pray leave to be dismissed with their costs &c.

Shanda J. C.

Gardner vs wife
vs 3 Decr
Cogdell vs also

By consent of parties this day this cause came on to be heard on the plaintiffs bill answer of all the defendants, general replication thereto and was argued by counsel. On consideration whereof the court doth adjudge order and decree that after allotment of one third in value of the Tract of land whereof Court Gardner dies seized and possessed containing by estimation 9 1/2 acres to Wm B Cogdell and Mary his wife as dower that partition be made of the residue into four equal portions, and allot one share to ~~Marjale~~ ^{Maryale} Gardner and Abby, his wife, one share to William Gardner, one share to Fatima Gardner and one share to Mary R. Gardner, and for the purpose of effecting such partition the court doth appoint Goodman B. Johnson, Mendith Holland, and James R. Gardner commissioners, and if in their opinion such partition cannot be made in kind without loss or injury to the parties, then that the said commissioners report that fact to the court and the reasons upon which their opinion is founded with the real value of the said land together with any other matter deemed pertinent by themselves or required by the parties to be reported.

1858 July. - Joint Costs

blk. -	\$ 4.20
Lau -	3.00
Shft -	20
Mt -	50
	9.90

Retain for future costs	1.50
	11.40

Sft Costy date 1858

blk.	\$ 0.25
Lau -	3.00
	5.25

to be paid

Gardner & wife

& } Co. D. 1st

Cogsdale & wife

Southampton County Court. May 17 1858.

Uriah Gardner & Abby his wife who before marriage was Gardner Plff
against
William, Fatima & Mary A. Gardner infants by L.R. Edwards their guardian
ad litem & Wm. H. Cogsdale Surge. } In Chancery
Defts }

By consent of parties this day this cause came to be heard on the plaintiffs bill, answers of the Defendants general replications thereto and was argued by counsel. On consideration whereof the Court doth adjudge, order and decree that after allotment of one third in value of the tract of land whereof Everett Gardner died seized and proposed containing by estimation 96 acres to Wm. H. Cogsdale and Mary his wife as doers, that partition be made of the residue, into four equal portions, and allot one share to Uriah Gardner and Abby his wife, one share to William Gardner, one share to Fatima Gardner and one share to Mary W. Gardner, and for the purpose of effecting such partition the Court doth appoint Goodman E. Johnson, Meredith Holland and Samuel R. Gardner Commissioners and if in their opinion such partition cannot be made in kind without loss or injury to the parties, then that said Commissioners report that fact to the Court and the reasons upon which their opinion is founded with the real value of the said land together with any other matter deemed pertinent by themselves or requested by the parties to be reported.

Attest

Testes

L.R. Edwards Clk

Gardner is wife
as 3 Decm
Cogsdale is wife as

1858 July 2nd.

Gardner vs wife
vs 3 Decree
Loogdale vs wife vs

This day this cause came on again to be heard on the papers formerly made and the report of the commissioners Goodman & Johnson, Meredith Holland and James H. Gardner made pursuant to a decree entered at the May term 1838 of this court and to which exceptions were filed at the same term and the said exceptions having been withdrawn and was argued by counsel. On the hearing whereof the court doth adjudge order and decree that the said report be confirmed, and that Goodman & Johnson who is hereby appointed a special commissioner for that purpose shall after having given at least twenty days notice of the time and place of sale by public advertisement at Franklin and other public places in the neighborhood proceed on the premises to sell at public auction to the highest bidder the tract of land containing 96 acres whereof Court Gardner dies seized and proposed subject to the widow's dower, on the following terms to wit, sufficient cash to pay the costs of this suit and of the sale, and the residue of the purchase money on a credit of six months bonds carrying interest from date, and take four bonds with good and sufficient security in equal amounts, and allot one bond to Uriah Gardner and Abby his wife, one bond to the lawful guardian of William Gardner, one bond to the lawful guardian of Fatina Gardner, and one bond to the lawful guardian of Mary O. Gardner, and obtain the title to the said land until all the purchase money shall have been paid. Then make the purchaser a deed, and the said commissioner is to report his acting and doings to this court, in order to a further decree.

But the said Goodman & Johnson shall not proceed to act under this decree unless he shall have executed before the clerk of this court a bond in the sum of five hundred dollars conditioned as the law directs.

Gardner & wife

& } Co: Deved

Bogsdale R.

Southampton County Court. July Term 1858

Gardner & Wife

against

Cogsdale & Wife &c

Piffs

Defts

In Chancery

This day this cause came on again to be heard on the papers formerly read and the report of the Commissioners Goodman E Johnson, Meredith Holland and James R Gardner made pursuant to a decree returned at the May Term 1858 of this Court and to which exceptions were filed at June Term and the said exceptions having been withdrawn and was argued by counsel On the hearing whereof the Court doth adjudge, order and decree that the said report be confirmed and that Goodman E Johnson who is hereby appointed a Special Commissioner for that purpose shall after having given at least twenty days notice of the time & place of sale by public advertisement at Franklin and at other public places in the neighbourhood proceed on the premises to sell at public auction to the highest bidder the tract of land containing 96 acres whereof Everett Gardner died seized and possessed subject to the widows dower, on the following terms to wit. Sufficient cash to pay the costs of this suit and of the sale, and of the residue of the purchase money on a credit of six months bonds carrying interest from date, and take four bonds with good and sufficient security in equal amounts, and allot one bond to Uriah Gardner and Abby his wife one bond to the lawful guardian of William Gardner, one bond to the lawful guardian of Fátima Gardner, and one bond to the lawful Guardian of Mary A Gardner, and retain the title to the said land until all the purchase money shall have been paid then make the purchaser a deed, and the said Commissioner is to report his doings and doings to this Court in order to a further decree - But the said Goodman E Johnson shall not proceed to ^{act} under under this decree until he shall have executed before the clerk of this Court a bond in the penalty of five hundred dollars conditioned as the law directs.

Joint costs of parties limit blk \$5.70

Law 5.00

Shff. .20

G.M. Buxton West. 50 \$ 11.40

Def. Cogsdale & Wife Costs. limit

blk. \$0.25

Law 5.00 } \$ 5.25.

\$ 16.65.

Cells Costs p. \$ 5.95

L R Edwards

Attest

Teste.

L R Edwards Clk

Bardner & Ulife

n } Sp^o

Boysdale & Ulife

1^o day July Term 1858

Entered

for W Vick depy
for W^m W Briggs shff

The Commonwealth of Virginia To the Sheriff of Southampton County Greeting
We command you to Summon George W Dixon

to appear before the ^{Justices} Judge of our ^{Court} Circuit of Southampton County at the Courthouse
on the 1st day of July Term next. to testify and the truth to speak
in behalf of Ulrich Gardner Wife & against Boydale & wife

and have then there the Just Witness Linton R Edwards Clerk of our said
Court at the Court house this 25th day of June 1858 in the 63rd year of
the Commonwealth

L R Edwards Clk

Garner & wife

vs }

Coggdale & wife et al

The undersigned Commissioners appointed for that purpose, beg leave to report, that they in obedience to a decree of Southampton County Court, entered at the May term 1858, did allot to W^m H. Coggdale and Mary his wife one third, in value, of the tract of land whereof Everett Garner died seized & possessed, said to contain ninety six acres: The dower as and for life, allotted to the said Mary Coggdale is marked and bounded as follows: Beginning at a red oak at Blackwater river, running from thence a straight line to a maple, a corner in the spring branch, thence down said branch to a black gum in the run of the Fox trap branch, thence down said Fox trap branch to the above river, thence up the river to the beginning: which we think is worth fully one third ^{in value} of the whole tract. And we consider the residue of the tract of land, with the appurtenances thereto belonging, not worth more than two hundred & fifty dollars: we did not divide the residue as directed by the decree, because in ~~the~~ opinion it would be to the injury of the parties, and we think it would be to the interest of the parties to sell the whole tract subject to the dower, for if divided into four equal parts it would not rent for any thing for no person would put it under fence for it, it being for the most part cleared & in some part land.

Respectfully submitted.

Goodman, Johnson & Commr.
Merritt Holland
James R. Garner

Mr H. Bogdale & wife, in reply to the note received
Because, the lines dividing the acres are so run
as to impair the fair value, and use of the same,
it runs near the dwelling house, and not a fair
portion of the meadow. They therefore pray the
court to recommend the said acres & visit
another, division, more just and equitable.

Respectfully

W. H. Bogdale

By Counsel

1858 June 6th

1858 Sep Court

'Garner & wife
against
'Coggdale & wife.

The undersigned Commissioner appointed for that purpose, beg leave to report, that in obedience to a decree of the County Court of Southampton, entered at the July term 1858, bearing advertised the time and place of sale of the tract of land whereof Everett Garner died seized & proposed, (said to contain ninety six acres) by several advertisements which were posted up at Franklin and at other public places at least twenty days previous to the day of sale, proceeded and sold the same, subject to the widow's dower, at public sale, on the premises, to the highest bidder, on the following terms to wit: sufficient cash to pay the costs of this suit, and of the sale; and of the residue of the purchase money, on a credit of six months; the bond carrying interest from date, when Wm H. Coggdale became the last bidder and purchaser for the sum of $\$300.25$

Your Commr then debited $\$16.65$ the costs of the suit, & $\$3$ due the Commo who set apart the dower, and $\$15$ the Commissioners on the amount of sale. 34.65

leaving a balance of $\$265.60$

Your Commr then took three separate bonds for $\$66.40$ each }
executed by Wm H. Coggdale with Robert Daughtry his security }
payable as follows: one bond payable to Elizabeth Garner & Abby her
wife, payable six months after date, with interest from date for $\$66.40$

as there is no lawful guardian for the infants, I took the three
remaining bonds payable to myself as follows

One for Wm Garner payable as aforesaid for $\$66.40$

One for Fatenia Garner payable as aforesaid for $\$66.40$

One for Mary A. Garner payable as aforesaid for 66.40

$\$265.60$ which

accounts for the purchase money aforesd.

Respectfully submitted.

Goodman C. Johnson

It now all men by these presents that we Goodman E Johnson by J. A.
Scoggins

are held and firmly bound unto the Commonwealth of Virginia in the just and full sum
of five hundred Dollars, current money of Virginia,
to the payment whereof well and truly to be made, we bind ourselves our heirs, executors and
administrators jointly and severally firmly by these presents. Sealed with our seals and
dated this 19 day of July A.D. 1858.

The condition of the above obligation is such, that if the above bound Goodman
E Johnson, Commissioner appointed under at July Court (Southampton) 1858. by a
decree in the suit of Gardner & Wife against Lodgepole &c. for purposes therein
expressed

Shall faithfully discharge the duties of his said office or trust according to law
then the above obligation to be void, or else to remain in full force and virtue.

Signed sealed and delivered
in the presence of the Court 3

G. E. Johnson
J. A. Scoggins

(Seal)
(Seal)
(Seal)
(Seal)