

1873-033 SOUTHAMPTON COUNTY
CHANCERY PAPERS

HOLMES + al vs. GARDNER & al VLEY

3/1873

other SURNAMES: Vick, Hundley

Killy p. v.

James Holmes, Esq.

n. } bly.

Arrington Gardner
and

James Hindley

Southampton

Co. Ct.

Holmes

& } Stat. Rules

Garthwaite & Co

In Southampton County Court.

James Holmes guardian, assignee, of A. I. Wick administrator of James Wick
dec'd who sues for himself & all other judgment Creditors of Arrington Gardner & James
Hurdley
Against
Arrington Gardner & James Hurdley.

1872 April 17 Summons issued.
" May 10 Summons ret'd Ex^o. Bill filed. A Nisi is aff'd.
" June " Bill taken for confessed & Cause set for hearing
1873 Mar. 6th Dismissed

5 65

36

40

bm

6.4.1

sh

1 28

all 4

16.00

23.61

James Holmes, jun
jr.

17 3 Bill

Wrighton Gardner
&
James Hindley

1872 May Rules

Co. Ct.

To the Hon. Jos. W. McGuire, Judge of the
County Court of Southampton, Virginia

Complaining shew unto the Court, your
complainant James Holmes, guardian, assignee
of A. J. Vick administrator of Jas. Vick dec'd,
who sues for himself and all other judgment
creditors of Arrington Gardner and James
Hendley -

Your complainant respectfully rep-
resents to the Court and says, That on the
21st day of November 1870, he obtained a
Judgment in the County Court of ~~Southampton~~
Southampton County, against Arrington
Gardner and James Hendley for \$60.95
with Interest thereon from the 25th day of Sep:
1859, Subject to a credit of \$30.28 cents on
the 21 Sep 1859, & \$7.87 cents, as will be
seen by a duly certified copy of said Judgment
filed herewith & marked "A". That the
said debt was contracted previously to the adoption
of the present Constitution of the State of Virginia
and is not subject to its provisions as to
the Exemptions therein contained, usually
called the Homestead Exemption -

That on said Judgment an execution of
fi. fa. duly issued and was placed in the
hands of the Sheriff of Southampton County
by him returned "No property except claimed

by the Homestead exemption" - as will be seen by a copy of said Execution and return filed herewith & marked 'B'.

~~That the said Judgment was duly docketed in the Judgment Docket Book of the Clerk's office of Southampton County Court on the day of _____ as will be seen by the Certificate of the Clerk of said Court filed herein & marked 'C' -~~

That Arrington Gardner after this on the 20th of August executed & had recorded in the Clerk's office of said County Court a writing setting apart a Homestead or Constitutional exemption, under the provisions of the present Constitution of Virginia, a copy of which is filed herewith & marked 'D'.

That the said James Hendly did on the 14th December 1870 also execute a similar writing for the same purpose which was recorded in said Clerk's office on the 15th day of December 1870 - a copy of which is filed herewith & marked 'E' -

That the said Arrington at the time said Judgment was rendered and docketed was proprietor of in fee, a tract of land in Southampton County after said containing 281 acres more or less, and bounded by the Lands of J. D. Patton, James McClenny, Jeremiah

Chappie, Nancy Davis and others —

That at the time said Judgment was rendered and docketed, the said James Armistead was seised of in fee, of a tract of Land in said County, containing by estimation 160 acres, more or less, & adjoining the Land of — and lies ~~under~~ between Vickniece Inn Lawrence Swamp

Your Complainant is advised and therefore charges that the said Armistead Deed, are null and void and of no effect, as to your Complainants' judgment — That his Judgment became a Lien on all said Land, from the day of the rendition thereof, That when the said Deed was contracted, no such exemptions were contained in the Law or Constitution of Virginia — That the Law of the State at the time such Contract was made should govern the rights of the parties

That if the ~~exemptions~~ claimed are allowed, it renders the said Gardner & Armistead, as to your Complainants' Demand notwithstanding each owns a good farm & personal estate — That to allow such exemption, the obligation of the said Contract would be virtually destroyed — Your Complainant therefore charges that That portion of the Constitution, ^{of Law} of Virginia which

allow a Homestead exemption of \$2000,
as to debts contracted before the same were
in existence, impairs the obligation of
said Contracts (of which your Complain-
ants is one) and is repugnant & opposed
to the Constitution of the United States & is
null & void — That said Homestead
exemption should be set aside and the
Land held responsible for your Com-
plainants' demand, and your Com-
plainant prays that said Land,
may be rented out or sold to pay
the same.

In Consideration whereof
that as this Court has jurisdiction
to grant all adequate relief, At the
End your Complainant prays that the
said Arrington Gardner & James
Hendley may be made defendants
herein, & answer all the allegations
herein, on oath — That the prayers
of your Complainant may be granted
as a matter of fact, and that all other
and further relief may be granted
consistent with Equity &c.

And your Complainant will &c

John R. Kelly Jr

Holmes

v.

Gardner & Humble

1873

March 21. 1873

deceit to be entered

J. W. Myerhart Judge

Holmes

v.

Gardner Humbly

It appearing to
the Court by statement (+) this
day filed that the Defendants have
paid to the plaintiff the debt due
him with all interest & costs, & the
cause is on motion of the plts.
attorney dismissed

Holmes
v.

Gardner & Humble

Statement

(X)

Filed 18 March
1873

Holmes

v

Garner & Hundly

Debt

\$60.95

cr. unknown -

30.28

costs at Law

\$30.67

7.81

\$38.48

Int from 22nd Sep 1859

to 19 Nov 1872

23.97

\$62.45

cr. Menhard

40.00

\$22.45

Int from 19 Nov 1872 to

20 Jan 1873

22

Costs of chg. sent

24.00

\$46.67

cr. Men

20.00

\$26.67

& Balance paid in full 26.67

all paid

John R. Kelly

Atto. Suplt.

18 Mar 1873

Holmes

to } Sep: Chy

Gardner J^r

1872. May Rules

Executed

A. H. Cobb 27
for W. W. D. 1991
M^{rs}

The Commonwealth of Virginia

To the Sheriff of Southampton County, Greeting:

WE COMMAND YOU to summon

Arrington Gardner & James Humbley

if they be found within your bailiwick, to appear at the Clerk's Office of our County Court of Southampton County, at the Rules to be holden for the said Court, on the first Monday in

May next to answer a bill in chancery exhibited against them in our said Court by James Holmes Guardian assignee of A. J. Vick admr. Jas. Vick. dec. who sues for himself & all other creditors of Arrington Gardner & James Humbley

And have then there this writ. Witness, *James R. Tyler* ~~GEWIN WHITE~~, Clerk of our said Court, at the Court-house, this *17* day of *April* - A., D., 1872, in the *96* year of the Commonwealth.

JR. Tyler. Clk

~~Johnson Jr~~

3

Hardner Jr

5 Exhibits with

Bice

Southampton County Court November 21st 1870

James Holmes Guardian assignee of A. J. Vick adm of Jas. Vick. Plff } In Debt.
against }
Arrington Gardner & James Hundley Defts }

This day came the plaintiff by his attorney and the defendants withdrawing their plea acknowledges the plaintiffs action for the debt in the declaration mentioned & costs. Subject to a credit of \$30 28 Cents, paid Sept. 21st 1859. Therefore it is considered by the Court that the plaintiff recover against the Defendants Sixty dollars and ninety five cents the debt in the declaration mentioned with legal interest thereon from the 25th day of September 1859 till paid. Subject to the credit aforesaid. And his costs in this behalf expended -
plff Costs \$7. 81.

Atty -

Teste, O. White Ck

"B"

The Commonwealth of Virginia.

To the Sheriff of Southampton County. Greeting

We command you that of the goods and chattels of Torrington Gardner & James Hurdley late in your bailiwick you cause to be made Sixty dollars namely five cents with legal interest thereon from the 25 day of September 1859 till paid which James Holmes guardian assignee of A. J. Vick admr of Jas Vick lately in our County Court of Southampton County has recovered against them as well for a certain debt as for interest thereon also the sum of Seven dollars 81 Cents which to the said Holmes adm & in the same Court were adjudged for costs in that behalf expended. Whereof the said Gardner & Hurdley are convicted as appears to us of record, and how you shall have executed this writ make known at the Clerk's Office of our said Court at the Rules to be holden for the said Court on the first Monday in February next and have then there this writ. Witness Osmin White Clerk of our said Court at the Courthouse this 30 day of November 1870 in the 93 year of the Commonwealth

White Clk

This Execution is to be credited for \$30.28 paid Sep. 21 1859

White c

Sheriff's Endorsement & Return - " Came to hand Dec 10 1870 at 4 O'clock P. m

W. W. Briggs Shff

" No property except claimed by the Homestead exemption

J. W. Vick Dy Shff.

Copy

True, O. White Clk

"10"

Holmes
v
Gardner

Stamp
See

To all whom it may concern

Know all men by these presents, That I Arrington Gardner of the County of Southampton & State of Virginia, a householder & head of a family do declare & make known that I claim as a Homestead & property exempt from levy seizure Sale &c under an act passed by the General Assembly of Virginia entitled "An act to prescribe in what manner and on what conditions a householder or head of a family shall set apart & hold a Homestead and personal property for benefit of himself and family exempt from Sale for debt" approved June 27 1870 the following real estate to wit, One tract of land containing 281 acres bounded by the lands of J. D. Pettlor, James McClenny Jeremiah Chappell, Nancy Davis & others and the following personal property, Viz, 1 Bay mare 2 head of cattle, 15 hogs, all my farming implements and household and kitchen furniture the valuation of both the land & personal property hereby claimed not being two thousand dollars but valued at \$800. Witness my hand & seal this 20 day of August 1870

Arrington Gardner (Seal)

Southampton County In the Clerk's Office August 20 1870
This deed of Arrington Gardner claiming a Homestead & property exempt from levy &c Under an act passed by the General Assembly of Virginia, was this received and acknowledged by the said Arrington Gardner to be his act and deed and admitted to record. Stamps of the Internal Revenue of the United States to the amount of One dollar being affixed thereto and duly cancelled

Teste

James R. Tyler D.C.

A Copy,

Teste

O. White Ck

184

Know all men by these presents that I James Hundley of the County of Southampton and State of Virginia a householder and head of a family do declare and make known that I claim as a homestead and property exempt from levy and seizure, sale & under and act passed by the General Assembly of Virginia entitled "An act to prescribe in what manner and on what conditions a householder or head of a family shall set apart and hold a homestead and personal property for the benefit of himself and family exempt from sale for debt" approved June 2^d 1870, the following real estate to wit: One tract of land &c. Six hundred dollars - and the following personal property viz four hundred and fifty dollars the valuation of both the land and personal property hereby claimed not being two thousand dollars but valued at one thousand and fifty dollars.

Witness my hand and Seal this 14th day of Decr 1870.

James Hundley (Seal)

Southampton County In the Clerks Office December 15th 1870
This deed was this day acknowledged by James Hundley a party thereto and admitted to record. Stamps of the Int. Rev. of the U. S. to the amount of one dollar & fifty cents being affixed thereto & duly cancelled.

Teste

James R Tyler DC

A. C. G. py

Teste,

White CC

Holmes

21

Gardner, Jr.

Statement of
Sett.

Int. from 25 Sep. 1859 to	{ Cr. same day	\$60.95
		30.28
		\$30.67
to 18 Nov. 1872 - 13 yrs. 1m. 24 d		23.97
	Int. at Law.	7.81
		\$57.55

Certs of Chy. sent

Att. &c	\$16.00
Clerk	6.41
Sh.	1.20

Cr. 18 Nov 1872.

\$40.00