

1886-10

Southampton County Chancery - Faison, Pembroke vs McClelland, Wm. H. et al

Sues for partition of land by
sale of same -

Raney, John N.

" , Elizabeth

Faison, Robert F.

" , William G.

M. H. S. { McClelland, Mary E.

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~~107~~

Chancery Papers

Pembroke Faison

Against

Wm H. Mc Clelland & al

Kilby p. q.

Pembroke Faison

vs. } In Chy.

Wm H. McLeelland and
others

Bill

In the Circuit Court of Southampton
County, Virginia

Pembroke Faison, Complainant,

Against } In Chancery

Wm H. McClelland and others,
Defendants,

To the Honorable George Blow,
Circuit Court Judge in and for
the said County of Southampton:

Humbly complaining, respect-
fully represents and shows unto
Your Honor, Your Complainant,
Pembroke Faison,

That in the year 1860 or 1861
Wm Binford of said County de-
parted this life intestate, seized
and possessed of a parcel of
land in said County on Black-
water River about twenty five miles
northwest of the Court House, contain-
ing three hundred and ninety three
acres, more or less, and bounded
by the lands of J. T. Bowden, James
Hargrave, Wm H. Pretlow and R. H.
Pretlow and said River.

That the said Wm Binford left
surviving him, his widow Elizabeth,
and three children, namely, Wm

A. Binford, Eliza Florence Binford and Mary Jane Adelia Binford.

That the said Elizabeth is now the wife of John C. Ramsey, (she having married him on the 15th day of February 1881) and is now living with him in Surry County in this State. She is entitled to dower in said land.

That by a deed of bargain and sale dated the first day of June 1880 and recorded the 5th day of April 1884 in the office of the Clerk of the County Court of said Southampton County, the said W^m A. Binford together with his wife, sold and conveyed all his interest & estate in said land unto your Complainant, the said interest and estate being a one-third undivided interest and estate as will appear by a duly authenticated copy of said deed filed herewith as part of this Bill and marked "Exhibit A".

That the said Eliza Florence being entitled as one of the three children of said W^m Binford to a one-third undivided interest in said land subject to the widow's right of dower, and having previously married your Complainant said Pembroke Faison, departed

This life in November 1882 intestate leaving surviving her, her husband your Complainant, Pembroke Faison and two children by him, namely Robert F. and W^m G. Faison, who are under the age of twenty-one years and quite young.

That at the death of their mother, said Eliza Florence Faison, the said Robert F. and W^m G. Faison as her heirs at law, became seised and possessed of her one-third undivided interest in said land, subject to said dower and the rights of their father, the said Pembroke Faison. The said Robert F. and W^m G. Faison are still living.

That the said Mary Jane Adelia being entitled as one of the three children of said W^m Bieford to a one-third interest in said land subject to the widow's right of dower and having previously married W^m H. M^cClelland, departed this life in November 1881 intestate leaving surviving her, her husband said W^m H. M^cClelland and one child ^{by him}, namely, Mary E. M^cClelland who is under the age of twenty-one years and quite young and still living.

That at the death of said Mary Jane Adelia M^cClelland, her said

child Mary E. M^cCllelland as her sole heir at law became seised and possessed of her one-third undivided interest in said land subject to said dower and the rights of said W^m H. M^cCllelland.

So that subject to said dower and the rights of said Pennebroke Faison and W^m H. M^cCllelland by virtue of their marriages with the said Eliza Florence and Mary Jane Adelia Binford respectively, one undivided third interest in said land is at the present time owned by said Pennebroke Faison, a like interest by his two minor children, Robert H. and W^m G. Faison aforesaid, and a like interest by said Mary E. daughter of said W^m H. M^cCllelland.

Your Complainant charges that the said land is liable and subject to partition in one of the several modes prescribed by law amongst the above-named parties who are entitled thereto, but he believes and so charges that said land is not susceptible of partition conveniently in any one of said modes.

Your Complainant further charges that the interests of all parties interested will be pro-

noted by a sale of said land and the distribution of the proceeds of the sale among said parties according to their respective rights.

Your Complainant prays, therefore, that said land be sold and the proceeds of the sale divided among the parties in interest according to their respective rights.

In consideration whereof your Complainant being without remedy save in a Court of Equity, prays that the said W^m H. McCelland, John A. Ramey and Elizabeth his wife, Robert F. Faison and W^m G. Faison and Mary E. McCelland the last three named being infants under the age of twenty-one years may be made parties defendant to this Bill and be required to answer the same and all the allegations thereof on oath, the adults in their proper persons and the infants by their guardian ad litem to be appointed for them to defend their interests in this suit; that the said land may be partitioned or divided among the parties in interest according to their rights, if said partition can be conveniently made in kind, or that it may be sold and the proceeds of the sale divided a-

among the parties entitled thereto,
if said partition cannot be
conveniently made in kind,
as your Complainant says it
cannot be; and that such
other, further and general relief
may be granted Your Complain-
ant as the nature of his case
may require or to Equity may
seem meet. And as in duty
bound Your Complainant will
ever pray etc.

Wilbur J. Kilby p.g.

Sept. 15th. 1884

Faison

vs. } In Chy

McClalland & al.

Answer of
Wm H. McClalland

1884. Oct: Rules
Filed. L.B.P.C.C.

In the Circuit Court of South-
ampton County, Va.

Faison
vs. } In chancery
M^cClelland & al

The answer of W^m H. M^cClelland one of the defendants to the Bill of Complaint exhibited against him and others in the Circuit Court of Southampton County by Pembroke Faison Complainant.

This defendant reserving to himself all right of exception to the said Bill of Complaint, for answer thereto says,

That the facts and statements in said Bill contained are true and that this defendant believes as charged in said Bill, that the parcel of land mentioned and described in said Bill cannot be conveniently divided in kind among the parties entitled thereto and that the interests of all parties concerned will be best promoted

by a sale of said land and the distribution of the proceeds among the parties in interest according to their respective rights and that so far as this defendant is concerned he is willing that said land be sold and the proceeds distributed as aforesaid.

And this defendant further says that he is not, nor is his daughter, Mary E. McClelland, nor is any one of the parties interested, either willing or able to accept said land, or any part of it and pay the other parties for their interests therein.

And now having fully answered the Bill of the Complainant, this defendant prays hence to be dismissed with his reasonable costs in this behalf expended. And he will ever pray etc.

~~Witness~~

C. H. McClelland,

I hereby acknowledge sufficient and legal
service of this process and the receipt of
a copy hereof in writing this 4th day of
~~October~~ ~~September~~ 1884.

~~Witness~~

W. A. M. Cullum

Thason

as { Deputies

McKelland & others

1884 Oct: 11: Puler.

Text here

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County—Greeting:

WE COMMAND YOU TO SUMMON

Wm H. McClelland

to appear at the Clerk's Office of our Circuit Court of Southampton county, at the Rules to be holden for the said Court
on the first Monday in *October* next, to answer a bill in Chancery exhibited against *him & others*,
in our said Court by *Pembroke Faison*

And this

he

shall in no wise omit; and have then there this writ.

WITNESS, J. B. PRINCE, Clerk of our said Court, this

16

day of

September

, 188*7*,

in the

189

year of the Commonwealth.

Teste. *J. B. Prince* C. C.

Faison

or } summons

McBelland & others

1884 Oct: Rules

Executed 29th Sept 1884
by saving a true copy
of this copy on the
within named
parties.

W. S. Savidge
Sheriff

Tax paid

THE COMMONWEALTH OF VIRGINIA,

Surry
To the Sheriff of ~~Southampton~~ County—Greeting:

WE COMMAND YOU TO SUMMON

his wife

John A. Ramsey and Elizabeth

to appear at the Clerk's Office of our Circuit Court of Southampton county, at the Rules to be holden for the said Court

on the first Monday in

October

next, to answer a bill in Chancery exhibited against

them & others

in our said Court by

Penelope Hanson

And this

They

shall in no wise omit; and have then there this writ.

WITNESS, J. B. PRINCE, Clerk of our said Court, this

16

day of

September, 188*7*,

in the

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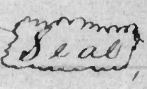
year of the Commonwealth.

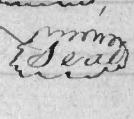
Teste. J. B. Prince C. C.

Know all men by these presents
that William A. Binford and Augusta
his wife for and in consideration
of the assignments to them by J. Faison
and E. F. his wife of all of their right
title and interest in and to the Estate
of Robert Binford deceased do grant
unto J. Faison with general warranty
all of their right title and interest
in and to that certain tract or parcel
of land situated lying and being in
the County of Southampton of which
Wm. Binford deceased the father of the said
Wm. A. Binford died seized and possessed
being the Residence of the said Wm. Binford
the entire tract containing by estimation
452¹/₂ acres more or less: including of
their interest in and to that portion
of said land assigned as dower to the
Widow of the said Wm. Binford.

The said land being bounded by Black
Water River the lands of Wm. H. Pickett
and John Pickett the said Wm. A. Binford
covenants that he has the right to
convey his interest in the said land to the
said grantees that he has done no act
to encumber the same that the grantees
shall have quiet possession thereof free
from all encumbrances and that he

Will execute such other and further
assurances as may be requisite. In testimony
whereof the said William A. Binford
and Augusta H. his wife have hereunto
set their hands and affixed their seals
this 1st day of June 1880

Wm A. Binford 

Augusta H. Binford 

State of Virginia
Isle of Wight County to wit:
J. R. E. Boykin a commissioner in Chancery
for the Circuit Court, for the County
aforesaid in the State of Virginia do
certify that Wm A. Binford whose
name is signed to the writing hereto
annexed bearing date on the 1st day of
June 1880, has acknowledged the same
before me in my ^{said} County. And I do further
certify that Augusta H. wife of the
said Wm A. Binford whose name is signed
also signed to the said writing personally
appeared before ^{me} in my said County
and being examined by me privately and
apart from her ^{said} husband and having
the writing aforesaid fully explained
to her she the said Augusta H. acknow-
ledged the said writing to be her act

and declared that she had willingly
executed the same and does not wish
to retract it. Given under my hand this
1st day of June 1880

A. E. Boykin } Comm^{ry}

Southampton County In the Clerk's Office
April 5th 1884. This Deed of Bargain & Sale
from W. A. Binford et ux to P. Paison et ux
was this day received and together with
the Certificate thereto annexed admitted
to record

Test J. B. Prince Ck
A. Copy
Test J. B. Prince Ck

7 118 ~~118~~
Farron

vs 2 Stat: Rules

McClelland & others

In the Circuit Court of Southampton
County.

Pembroke Faison Pltff.

against

Wm H. McClelland, Jno N. Ramsey

+ Elizabeth his wife, Robert F. Faison

Wm G. Faison and Mary E. McClel-

land, last three minors.. Defs.

In
Chancery.

1884 Sept 16. Summons issued to Oct. Rules.

" Oct. Rules. Summons ret'd executed. Bill filed. Exhibits.

I. B. Priner assigned Gow as item to infants

defts. Answer of infant defts filed.

Shel replication.. Decree nisi vs adults..

Ramsey wife.. Answer of Wm H. McClelland filed..

Nov. Rules. Cause set for hearing..

Faison

vs. } In Chy.

M^{rs}. Clelland & al.

Answers of the
infant defendants
by their guardian
ad litem

In the Circuit Court of Southampton
County, Va.

P. Faison, Complainant

vs. } In Chancery

McLelland & others, Defendants

The joint and several answers
of Robert F. and Wm G. Faison and
Mary E. McLelland, infants un-
der the age of twenty-one years, by
Joseph B. Prince their guardian
ad litem, assigned to defend
them in this suit, to the Bill of
Complaint, exhibited against them
and others in the Circuit Court
of Southampton County by Pen-
broke Faison, Complainant:

These respondents reserving to
themselves the benefit of all just
exceptions to the said Bill, for
answer thereto, by their said guar-
dian ad litem, say,

That they are infants of ten-
der years and by reason of their
infancy, are incapable of un-
derstanding, or taking care of

their rights and interests in
said suit. They, therefore, by their
said guardian ad litem, commend
themselves and their rights and
interests in said suit to the pro-
tection of the Court and pray that
no decree may be pronounced there-
in which will tend to their prej-
udice.

And having fully answered, these
respondents pray to be hence dismiss-
ed with their reasonable costs in
this behalf expended, and they will
ever pray etc.

L. B. Prince Son
ad litem.

Faison

vs } In Chy

M^{rs} Lelland & al

Southampton County
Circuit Court
Nov. 5th. 1884

Decree

To be entered

Geo Bland

Entered

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Faison

vs.

M^cLeelland & others

This Cause came on this day to be heard on the Bill of the Complainant taken for confessed as to the defendants, John C. Ranney and Elizabeth his wife on whom process had been duly served they still failing to appear and plead answer and demur to the said Bill, and upon the exhibit filed with said Bill, and the answers of the infant defendants by Joseph B. Prince, their guardian ad litem and the answer of W^m H. M^cLeelland in his proper person, with general replications to said answers, and was argued by counsel.

On consideration whereof the Court doth adjudge, order and decree that the papers in this Cause be referred to one of the Commissioners of this Court, who is directed to enquire ~~into~~ and report to Court.

1. Whether the land in the Bill

of the Complainant mentioned and described can be conveniently divided in kind between the several parties entitled to share therein.

2. If the said land cannot be conveniently divided in kind, whether any party will take the entire property and pay therefor to the other parties such sums of money as their interests therein may entitle them to.

3. If said land cannot be conveniently divided in kind and no party will take the entire parcel and pay the others for their shares, whether the interests of the parties entitled to said land or its proceeds, will be promoted by a sale of the entire property or an allotment of part and the sale of the remainder.

Which several inquiries, the said Commissioner will make and to the Court report, together with any matters specially stated deemed pertinent by himself or required by any party to be so stated and together with any and

all such evidence as may be
taken by him ~~or examinations~~
~~of witnesses as may be~~^{or} adduced
before him touching the matters
involved in this suit.

Pembroke Faison

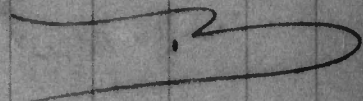
vs. } In Chy.
McClelland & al.

In Southampton County
Circuit Court
November 5th, 1886

Order to be entered

Levi Blood,

J.,



✓

Pembroke Faison

vs.
Wm H. Mc Clelland & al.

On the motion of the defendants
by counsel it is ordered that this cause
be dismissed.