

1898-02

Southampton County - Chancery

Borden, John D.
et al

vs. Borden, Thomas B.
et al

Land to be sold +
proceeds divided in
instalments, for rights
share

Borden, Sarah B. Glover

Borden, Chas. L.
Borden, Lucia B.
Sharpe, A. B.
Adm.
Webb, Julia

Bardonia, N.Y.

Bill in Equity.

Bardonia, N.Y.

1866, 2 Sept. filed
M. C. C.

J. C. PARKER,
ATTORNEY-AT-LAW,
Waco, Texas, U.S.

To the Hon.C.W.Hill, Judge of the Circuit Court of the County of Southampton :-

Your complainants, John D.Barden and Sarah B.Glover(nee Barden), sheweth unto the Court that your complainants' father, James E.Barden, was in his lifetime seised and possessed of certain real estate lying in Newsoms District, in the county of Southampton, containing about 290 acres, on which he resided, bounded by the lands of A.D.Bryant, A.B.Thorp, Josiah Ferguson and others, and being so seised and possessed, the said James E. Barden, in the month of October 1880, died intestate, leaving your complainants and Thomas B.Barden, Pattie L.Barden, Chas.L.Barden, and Luther B.Barden, the last two being now infants, his only children and heirs at law. That the said James E.Barden also left a widow, Julia Barden(nee Hansel). That at the November term of 1880 of the County Court of Southampton County, a paper purporting to be the last will and testament of James E.Barden was offered in said court for probate, but was rejected by the court as not being the true will and testament of the deceased, and at the same term the said court granted letters of administration on said estate to A.B.Thorp ; and also at the same term the said court appointed Commissioners to assign the Homestead exemption to the widow and children of the deceased ; all of which will more fully appear from a copy of the record of said court herewith filed, marked exhibit "A" and prayed to be read as a part of this bill. And your complainants further show that at the March term 1881 of said Court, the said Commissioners, ^{having} reported assigning all the real and personal estate of which the said James E.Barden died seised and possessed to the said widow and children (of which your complainants were two), as their homestead exemption, which report

had been made more than thirty days and no objections thereto having been filed, the said court confirmed the said report and order the same to be recorded, which was accordingly done, all of which will more fully appear by a copy of the proceeding of said court herewith filed marked exhibit "B", and by a copy of said recorded report herewith filed marked exhibit "C", both of which are prayed to be read as a part of this bill. That said land was afterwards transferred on the land books to Julia Barden, the widow of the deceased, and so stand at this time as will be shown by a copy of this entry on the land books for said district herewith filed, marked exhibit "D" and prayed to be read as a part of this bill. That on the 19th day of September 1881, the said A.B. Thorp rendered an account of his transactions as Admr. of James E. Barden deceased before the Commissioner of Accounts of the said County Court, showing a balance due the said estate at that date of \$160.42, which account was duly confirmed and recorded in Will-Book No. 21, page 30, in said office, a copy of which report is herewith filed marked exhibit "E" and prayed to be read as a part of this bill. That since the assignment of said homestead the said Pattie L. Barden has died intestate, ~~an infant~~, an infant, and without issue. That on the 7th day of July 1886 the said Julia Barden, widow as aforesaid, married Geo. D. Webb, as will appear from a copy of the record of said marriage herewith filed marked exhibit "F" and prayed to be read as a part of this bill.

Your complainants are advised and believe that the said Julia Webb, formerly Barden, has by her marriage with Geo. D. Webb forfeited all claims to any homestead in said land under the laws of the state of Virginia, and that she now has no interest therein whatever. Your complainants further are advised and believe that

the share of the said Pattie L. Barden in said land, she having died under age and without issue, went by operation of the law of Virginia to your complainants and the other three brothers of said Pattie L. Barden. Your complainants therefore believe that they and Thomas B. Barden, Luther B. Barden and Chas. L. Barden, the last two infants, are each entitled to a one-fifth undivided interest in the fee-simple in said land. Your complainants further are advised and believe, and therefore charge, that the said Chas. L. Barden and Luther B. Barden, infants, are not entitled to hold the whole of said land under the homestead exemption law to the exclusion of your complainants, but that the said infants cannot claim the homestead exemption against your complainants, and that your complainants are entitled to have the said land divided and their portions allotted to them either in kind, if it be practical to divide it in kind, or in money if it be impractical to divide it in kind and it is necessary to sell said land for a division. Your complainants further show that there is very little income from the said land, that it is rapidly deteriorating and decreasing in value, and that it is greatly to the interest of all concerned therein that the same be divided, or that it be sold and the proceeds divided, between those entitled thereto, the shares of the said infants to be held as directed by the statute in such case made and provided.

Forasmuch therefore, as your complainants are remediless in the premises save in a court of equity, they pray that the said Thomas B. Barden, Chas. L. Barden, Luther B. Barden, A. B. Thopp, Administrator, and Julia Webb may be made parties to this suit and required to answer the same, though an answer under oath is express-

-ly waived ; that a proper guardian ad litem be appointed in
this cause for the said infant defendants, who shall also answer
this bill, though an answer on oath is expressly waived ; that
proper process issue ; that the said A.B. Thorp be compelled to
render a further account of his transaction as administrator of
James E. Barden, deceased ; that the said real estate be divided
between the parties entitled thereto, or else that it be sold and
the proceeds divided, in case it be indivisible in kind ; that
Proper counsel's fee be allowed the attorney for the Plaintiff.
that all proper orders and decrees may be made, accounts taken, and en-
quiries be directed, and that all such other further and general
re-lief as in the premises may be just and right may be granted.
And your Complainants will ever pray, etc. etc.

J. C. Parker p. q.

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ado 3 ~~Thunur~~
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Bardur is also

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eds 3

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Banden is als

The defendants say
the plaintiffs bill is not sufficient
in law

Shands is low p. d.

Bardon. et al.

W } Statement of costs

Bardon et al.

Bardm et als.

vs. } Statement of Costs

Bardm et als.

Serv. 25. 4 Copies 52. receipt 18. atty. 10. D. & C. 18. Rule 50 = 1.65
Interim return 35. Fil. Bill 15. Ex. 25. Dime 15 = .90
replication 15. 3 answers 45. Rule 50. Copy Ex. 120. 1 Decree 72 = 3.22
Haward \$ 5.77

Filing depositions & one report 30. 3 Decree 2.16 }
Taking Comm's bond \$1.40 Fil. Bryant's petition 15 } 4.01
Fil. Ex. 15. Fil. Comm's report 15. 1 continuance 25 }
Fil. report of assignament 25. Tax costs 40. Fil. among papers 25 } 1.45
Future Costs about 150 = 1.50

Paid Jan 30th 1897 L. A. Gay bank \$12.73
Shff. 3.00

Haward 4.37 Lawrence 16.50
McLennan 1.40 Fee of Comm. J. L. McLennan 5.00
Gay 696 \$ 37.23

Comm's to assign dealer

E. G. Ferguson 1.00

A. D. Bryant 1.00

J. W. Whiting 1.00

3.00

Jan. 23rd. 1897.

\$40.23

Barden et als.

Barden et als.

J. G. Parker

to {

COMMISSIONER'S
BOND.

Commonwealth.

1870 21st Dec. filed

L. A. Gay G. G.

Entered Page 69

Know all Men by these Presents, That we J. G. Parker

By H. J. Pace

are held and firmly bound unto the Commonwealth of Virginia, in the sum of

Seven Hundred and Fifty 1200 Dollars,
to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind
ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally,
firmly by these presents, hereby waiving the benefit of our Homestead Exemptions as to this obligation,
and any claim or right to discharge any liability to the Commonwealth arising under this bond, or by
virtue of said office, post or trust, with coupons detached from bonds of this State. Sealed with our
seals, and dated this 21st day of December one thousand eight
hundred and Twenty Six.

The condition of the above Obligation is such, That if the above bound

J. G. Parker

shall faithfully perform the duties of his office or trust, as Special

Commissioner

under a decree of the Circuit Court of the County of Southampton, pronounced on the 25th
day of March, 1896, in the suit therein depending under the name and
style of Borden et al. vs. Borden et al.

then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and acknowledged in
the presence of

J. G. Parker

SEAL.

H. J. Pace

SEAL.

SEAL.

In the Clerk's Office of the Circuit Court of the County of Southampton:

This day H. J. Pace

surety on the above bond, made oath before me L. R. Gay, Clerk
of the Circuit Court of the County of Southampton, that his estate after the payment
of all his just debts, and those for which he is bound as security for others,
and expect to have to pay is worth the sum of Seven hundred and fifty dollars;
whereupon the said bond is admitted to record according to law.

Given under my hand this 21st day of Dec. 1896.

Teste:

L. R. Gay

Clerk.

A

Order

Off/t. Comm

Southampton County Court, November Term 1880.

Julia Barden, having this day filed her petition asking the appointment of Commissioners to allot her + her children a Homestead in her husband's James E Barden's Estate, he not having set it aside, in his lifetime, The Court doth adjudge, + order that Elliot L. Ferguson - George W. Whitfield, Albert B. Boyant and E. M. Boyant, be appointed Commissioners (any three of whom may act), to allot a homestead to Julia Barden the widow, + his six Infant children, to wit: John A. Barden, Fattie. L. Barden, Sarah B. Barden, Thomas B. Barden, Charles L. Barden + Luther D. Barden, the said Homestead to be if there be so much \$2000.- exclusive of the poor debtors exemption + report to court in order to a further decree

A Copy

Teste: B. F. M. Lemore C. C.

Julia Barden + children. 3

Ex parte in Homestead

Decree

This day this cause came on again to be heard on the papers formerly read and the report of Elliot L. Ferguson, George H. Whitfield and W. E. Magitt Special Commissioners allotting the homestead to Julia Barden widow of James E. Barden, Patten L. Barham, Sarah B. Barham, Thomas B. Barham and Charles L. Barham which report was returned at the ^{February} 1881 of this Court and the said report having lain one term for exceptions and none having been filed the Court doth adjudge order and decree that that the said report be confirmed and that the same be recorded according to law.

A copy:

Teste B. F. M. Lemoine C. C.

We the undersigned Commissioners appointed by the order of the County Court of Southampton entered at the November term 1880, beg leave to report that acting under ^{the} said order we have set aside the following property to wit: One tract of land said to contain two hundred and nine acres more or less, valued at One thousand Dollars and bound as follows, adjoining the lands of Albert D. Bryant A.B. Thorp Josiah Ferguson and others and the following personal property, three feather beds and furniture six chairs one loom and harness cooking utensils earthen ware, two tables &c valued at \$25-⁰⁰ Dollars A.B. Thorp. Administrator two hundred and twenty eight dollars and ninety-five cents value of real and personal estate \$1303.95 etc to be held as a homestead By Julia Barden the widow and her six infant children to wit: John N. Barden, Pattie L. Barden, Sarah B. Barden, Thomas B. Barden, Charles L. Barden and Luther D. Barden, widow and children of James E. Barden.

All of which is respectfully submitted.

Elliot C. Ferguson
Geo. H. Whitfield
N. E. Magett

A Copy:

Test: B. J. M. Lemore b.b.

The Estate of James E. Barden d. S.
In account with A. B. Thorp, his Administrator.

1880			Dr	Cr
Oct	14	By this amount received from the sale of Chatter Estate, made by A.B. Thorp as Agent, and turned over to himself as Administrator after paying all costs &c charged as agent		297 45
		To Commissions on same	14 88	
Dec	30	To paid Wm B Shands fee as Counsel for estate, and attending to allotting homestead to the widows & children	30 00	
1881	Jan	10 To paid for Coffin	25 00	
"	"	" " " " digging grave &c	2 00	
"	"	" this amount retained to pay Dr. Wm H. Daughtry (Med. bill)	45 00	
"	"	" paid James J. Barden for burial clothes &c	15 15	
Aug	1	" Commissioners fee for this ac & copy retained	3 00	
"	"	" Clerks fee for recording same this account (retained	2 00	
"	"	" Balance	160 42	
1881			\$297 45	\$297 45
Aug	1	By amount due this day brought down with interest thereon from ^{Date}		\$160 42

To the County Court of Southampton County
The Commissioner would state Specialey
that he posted a notice at the Court house

door directed "to the creditors of the said Estate" appointing the 2nd day of May last, for receiving proof of all the debts or demands against the said decedent or his estate which notice is herewith returned: That no debt was produced for proof before the Commissioner, and she therefore made up and settled the foregoing account. All of which is

Respectfully submitted

James R. Tyler

Commissioner

"

Exhibit
Adm. Acct.

Southampton County: In the Clerk's Office August 1st 1881 — This account of J.A. Thorp's Administration on the estate of James E. Borden, dec'd. was returned and filed for exceptions, and at a Court held for the said County on the 19th day of September 1881, said account having lain on the table and upwards in the Clerk's Office and no exceptions being filed thereto, it was examined, confirmed and ordered to be recorded.

Teste: L. R. Edwards C. C.

A copy:

Teste: B. A. McLeone C. C.

1881. Dec. 27, Rec of J.A. Thorp. adm J.E. Borden \$160.⁴² - in full

290.

Delivered to Borden
J.R.

MARRIAGE * LICENSE

Virginia, Southampton Co to wit:

To any Person Licensed to Celebrate Marriages:

You are hereby authorized to join together in the Holy State of Matrimony, according to the rites and ceremonies of your Church, or religious denomination, and the laws of the Commonwealth of Virginia,

George D. Webb
and Julia A. Barden

Given under my hand, as Clerk of the County Court of Southampton Co this 5th day of July 1886
J. B. Prince Clerk.

CERTIFICATE TO OBTAIN A MARRIAGE LICENSE,
TO BE ANNEXED TO THE LICENSE, REQUIRED BY SECTION 2229 OF THE CODE OF VIRGINIA.

Time of Marriage,	Place of Husband's Birth, Portsmouth Va.
Place of Marriage, Southampton	Place of Wife's Birth, Southampton Co.
Full Names of Parties Married, George D. Webb	Place of Husband's Residence,
Julia A. Barden	Place of Wife's Residence,
Color, White	Names of Husband's Parents, J. H. + Sarah V. Webb
Age of Husband, 40 years	Names of Wife's Parents, Jm + Bettie Harsel
Age of Wife, 35 "	Occupation of Husband, Saw mill
Condition of Husband (widowed or single) Single	
Condition of Wife (widowed or single) Widowed	

Given under my hand this 5th day of July 1894
J. B. Prince Clerk.

MINISTER'S RETURN OF MARRIAGE.

I Certify, That on the 7th day of July 1886
at Julia A. Barden's residence Southampton Co. Va. I united in Marriage the
above-named and described parties, under authority of the annexed License.

Jos. O. Moss M. C. Church. Suth

The Minister celebrating a marriage, is required, within TEN days thereafter, to return the license to the Office of the Clerk who issued the same, with an endorsement thereon of the FACT of such marriage, and of the TIME and PLACE of celebrating the same.



Mr J. le Parker
Franklin
Va

Newtons va Jan 17 1896

Mr J. le Parker

Dear Sir I have our

Bond against Jas D Bardin son of Jas
Bardin for \$40.25 Interest from 3rd Feby 1891
pd on it 11 Decr 1891 \$22.25 paid \$11.77
march 2nd 1893 paid on it \$2.50 April 28th 1894
I have another Bond for \$19.50 Interest
from 14th Jan 1895 no cr on it both of
these Bonds is secured by "Deed of Trust",
as, you sold their Land a short time
back and I write to let you know
it so that you may not pay out the
money without paying my 2 notes

Respectfully
Jas J Darden

Names of persons Who by himself or by his tenant has the free hold in possession of land charged	Residence of the owner of the tract of land	Nature of the tenure wherein held in fee or for life	No of acres	Name of tract description of land &c	Bearing from C.H.	Miles	Value of land per acre in- cluding buildings	Total value of the land and build- ings	Assessment of tax on land & buildings at 40 c. per \$100. value thereof	Name or no. of School Dist	Assessment of tax land for Co. free School	Dist free School	Total Co. & Dist	Tax for Co. per.
Barden Julia	Southampton	fee	209 1/2	bay trees Swamp	S.E.	10	3 ⁰⁰	628.50	1 44	Newsome	31¢	46¢	77¢	1.80

John D. Barden Defts.
and Sarah B. Glover.

vs.

Edw Blaney

Thomas B. Barden,
A.B. Thorpe Admin
of Jas E. Barden decd
Julia Webb formerly
Julia Barden, & Jas
L. Barden, & Luther B.
Barden the last two
infants by J.L. McLenore
their Edw ad litem.

Defts.

1894, Aug. 29, Process filed to 2nd Sept Rules

" 2nd Sept Rules Process ret^d executed
Bill & Ex filed J.L. McLenore appt.
Edw ad litem & decreed nisi

vs. Adult defendants.

1894, 1st Oct Rules, Bill taken for con-
fessed and cause set for
hearing.

Barden et al

Dr } Stat: Rules

Barden et al

2 Sept Rules

✓

Julia Webb formerly
Julia Barden

Commissaries to
Advt Julia Barden
Dover

Edw. C. Ferguson

J. J. Dandine

Bernard Worrell

Albert Bayant

COMMISSIONER'S OFFICE,

COURTLAND, VA.,

May 27 1895

To Julia Webb formerly Borden.

You are hereby notified that I have fixed upon the 24 day of June next, if fair, if not, the next fair day thereafter (Sunday excepted), to take and settle, at my office, the following accounts, to wit:

1st--An account of the transactions of A.B.Thorp, as Administrator of the said James E. Barden.

2nd--An account of the debts due by the said deceased or his estate with their order of priority and dignity, and which of them contain homestead waivers in the evidences thereof.

3rd--An account of the annual and feesimple value of the real estate left by the said James E. Barden.

4th--Whether the real estate belonging to the said estate is susceptible of division in kind among the five children of the said deceased with the evidence upon which he bases his conclusion.

5th--Any other matter which the Commissioner may deem pertinent or which he may be requested to report on by any one interested in this suit

required to be taken by a decree of Southampton Circuit Court, rendered at the March term, 1895, in a suit in Chancery depending in said Court, in which you are parties, plaintiffs and defendants; at which time and place you are required to attend.

Given under my hand as Commissioner in Chancery of the said Court, the day and year first aforesaid.

James L. McLeure Commissioner.

To the Sheriff of Southampton county to execute.

Borden, 2 vols

as {

Borden, 1 vol

Brief of
Plaintiffs' Counsel

J. C. PARKER.

ATTORNEY-AT-LAW.

Main St., Franklin, Va.

Brief of J.C.Parker, counsel for the plaintiffs in the cahncery
suit of Barden, et als. VS. Barden, et als., pending in the Cir-
cuit Court of Southampton County and argued at the November
term 1894 thereof.

The facts in this case are very simple and the application of
the law to the facts is in my opinion by no means complicated
or difficult. James E. Barden died leaving just about \$2000.
no debts so far as the court is informed.
worth of property and ~~and the court is informed of no debts~~
~~and the court is informed of no debts~~. He left surviving
him a widow and six children, all under age. The homestead was
assigned to this widow and these minor children in order to
avoid the payment ^{we must suppose} of ~~the~~ debts, ^{though the court is informed of no debts,} and that the widow and chil-
dren might have as much as possible to live on until the home-
stead expired. Since that assignment the widow has married, thus
under the law forfeiting her rights, one of the children has
died without issue, and three of the children have become of
age, leaving two children only who are entitled to the homestead
, for I take it that under the law as these children became of
age their rights in the homestead as a HOMESTEAD ceased, for the
& 3636
statute (Sec. 3635 of the Code of 1887) says "for shall be held
by the minor children until they RESPECTIVELY attain the age of
twenty-one years or marry..... "The question therefore is
simply this, to-wit, shall these two children be allowed to hold
and use the whole of this property until they become of age to
the exclusion of those children who were under age or single
when the homestead was set apart but have since become of age
or married? I believe they will not be allowed to do so and
that the law does not contemplate any such unjust procedure.
The Homestead law is the creature of statute law and must be
construed according to the terms of the statute, and there is no

(1)

fixed principles of common law to govern in such cases. The statute and the Constitution of the state say that a householder shall hold his homestead exemption "free from levy, seizure, garnisheeing or sale, under any execution, order or other process, issued on any demand for any debt or liability on contract", and section 3656 of the Code says that "where such homestead has not been set aside by the householder in his lifetime, it may after his death, be set aside for his widow and infant children to be held by them exempt AS IT WOULD HAVE BEEN EXEMPT IN THE HANDS OF THE HOUSEHOLDER" or words to that effect.

This therefore would allow the minors in this case to hold the homestead property exempt only from the debts of their deceased father, or their own debts, and not free from the claims of other children who have grown too old to claim the homestead under the law and yet are entitled under the statute of descents to a part of their father's estate. And this principle has been fully settled it seems to me by the Court of Appeals in the cases of Helm vs. Helm, 50 Grat. 404, and Barker vs. Jenkins, 84 Va. 895 (also found in S.E. Rep. 6th, 459) True that in those cases the precise question in this cause was not raised or involved, but the PRINCIPLES applicable to this case were fully settled and decided. In the former case the court decided that where a decedent died leaving no children and no debts that the widow cannot claim the homestead in his property to the exclusion of his heirs. In giving this opinion the Court said,

"Any other construction of the statute would be to declare that the statute of descents and distributions had been repealed or modified by the homestead laws. Surely the Legislature never intended by the enactment of a homestead law to repeal or modify the statutes of descents in this state, which has become sacred by its antiquity, and one of the most important and valuable enactments, affecting the rights of property in the jurisprudence of this state. We cannot give such a construction to

these laws as will repeal or modify to any extent this useful and venerable statute, unless such intention plainly and unmistakably appears by direct repealing clause or the most necessary implication. If we give to the homestead laws the construction contended for we would, in effect, declare that a law, the sole object of which is the security of the debtor and his family against the demands of the creditor, should have the effect of taking away, in many instances, the whole property of a decedent from his ~~wife and heirs~~ children and heirs, and giving the whole to his widow during her life, and of changing the whole course of descents and distribution of property which has flowed in one channel for more than a century. Such construction can never have the assent of our judgement or the sanction of our judicial action. We are of the opinion that the claim of homestead can only be asserted by a widow against the creditors of her husband, and never against his heirs." (30 Grat. 412-13)

In the latter case above quoted the Court decided that where the decedent had had the homestead set apart during his life and died leaving a widow and two adult children and ~~no debts~~ debts, that the widow could not have that homestead to the exclusion of the adult children who had no right to claim homestead, and that the said children were entitled to have partition. Said the court in expressing this opinion,

"If the claim of the widow be well founded the ~~heirs~~ heirs are not entitled to the enjoyment, or to have partition, of the land during her life or widowhood. The statute of descents regulates the descent of estates of inheritance, and any one who claims as against the heir must make good the claim. The homestead provided in the act is not an absolute exemption, but a homestead exempt from levy, seizure, garnisheeing or sale, and this language is in accordance with the provisions of the Const (The Court then went on to repeat the opinion I have just quoted from 50th Grat. and to say the principle was the same in both cases, and denied the widow the homestead)

It seems therefore clear to me that the principle settled by the language of the law as interpreted by the Court in these two cases is that the homestead can be claimed by a widow OR MINOR CHILDREN only against debts and not against heirs or other adult children. True it does not say in terms that a minor child cannot hold against an adult child because that question was involved in neither case that was before them, but any intelligent construction of the language of the court must of

necessity see that the principle is the same in each case. It could not have meant to say that a dead man's wife could not hold his property under the homestead as against his children but that one minor child could hold it as against a number of adult children. To so construe its language would be to stultify ones self it seems to me.

But, the defendant will say, "In these cases there were no debts due by the decedent, while in the case at bar it may be ascertained that the decedent did owe some debts." In answer to this I will say that if the decedent did owe any debts and the defendants seek to prevent partition on that account that it is incumbent upon them to prove that such debts do exist and can be legally enforced against the estate, and there is not one scintilla of evidence produced by them, or anywhere in the case, to show that the decedent owed any debts whatever. *or if any, that they could now be enforced* The court in its construction of the law must certainly assume that there are no debts, or at the least must ascertain for itself whether the decedent does owe any debts or not, by reference to a commissioner, before it could decide this point. But I further contend that it is not material to the correct decision of the this cause whether there are any debts or not, because to say that a minor child could hold the whole of a decedent's estate to the exclusion of the adult children simply because the decedent happened to owe a debt that might not amount to 10 o/o of the property, would be manifestly inequitable and unjust. This point was not brought up directly in the Court of Appeals in the case above referred to, because in those cases, so far as the record showed, the decedent owed no debts. But the principle enunciated by the court in those cases fully covers such a case as this *will* be if it be ascertained that there are debts owing by the

decedent. Let us make practical application of principles to supposed facts and see how it looks. Suppose the decree I ask for is entered and the property left by decedent and sought to be partitioned by plaintiffs is found to ^{be} worth exactly \$2000. Then suppose also that the Commissioner finds that there are \$200. of debts due by decedent against which the homestead can be claimed. Then if the contention of the defendants be allowed to prevail the two minor children could hold the excess of property over and above the debts, to-wit, \$1800., under the homestead to the exclusion of the other three adult children who by reason of their age or marriage no longer have a right to any homestead. Would this be any more just, or any more in accord with the principles enunciated by the Court of Appeals, than if they were allowed to hold the whole of the \$2000. from the adults if there were no debts? Manifestly it would not. And if this contention of the defendants should prevail if it was found that there was \$200. of debts, then the same thing would prevail if there was only \$50., or \$25., or \$5. of debts, and the minor could exclude the adults from \$1995., because the decedent owed \$5. How manifestly absurd! Clearly the correct principle in such case would be to retain such portion of the property as corresponded in amount to the debts and let the minors hold this under the homestead, and then divide the remainder between the children of decedent. In other words in the case at bar if it be ascertained that there is \$2000. of property and \$200. of debts, then let the \$200. remain for a homestead for the minors, and give each of the children, minors ^{& in number} and adults, \$560. each; or if the property be divided in kind let each child's portion be charged with his pro rata share of said debts. With this expression of my views I ask the Court

to over-rule the demurrer to the bill and to enter the decree asked for by the plaintiffs and make partition of said property upon the lines indicated in the above ~~argument~~ argument.

Respectfully submitted,

J. C. Parker p. g.

8/12⁷³

Franklin. Va. Jan'y. 30th/89.

Received of H. Porter. Special Commr.
Twelve and ⁷³/₁₀₀ dollars in full of clerks fee
in suit of Borden vs. Borden. pending in
Cir. Ct. of Southampton Co. Va and including
final decree & filing away papers.

L. A. Gay. G. G.

\$51⁰⁰

Camden, Va, Nov. 31st 1898

Received of J. B. Parker Special Commissioner in
suit of Borden vs Borden Five dollars, fee as
auctioneer for selling land in said suit.

X J. M. Williams
Sgt

\$3⁰⁰

Received of said J. B. Parker Special Commissioner
Three dollars Sheriffs fees in said suit.

X J. M. Williams
Sgt

\$5.00

Rec^d. March 31. 1898, of J. B. Parker
Spec^l. Comm^r in Supt of Barden et. al: &
Barden et. al: Five dollars for making report
under deces of Const.

Jas. L. McLemore
Comm^r in Charge

By B. F. McLemore

Received of J. H. Parker, ^{Special Agent,} the sum of
One dollar each as pay for acting
as Commissioners in assigning
dower to the widow of the late James
E. Borden, as directed by order of
the Circuit Court of Southampton
County. Va. in the suit of Borden,
et al. vs. Borden et al. pending
herein.

Witness
W. B. McLevon

J. W. ^{his} ~~W~~ ^{mark} ~~Whitney~~
A. D. Bryant
E. C. Ferguson

Received of J.B. Parker, Special Commr., ^{in said Gordon vs. Gordon} Five
Dollars for writing out to W.B. Bryant, Thirly.
Five Dollars fee directed by decree a Sixteen
or 50/100 Dollars taxed fee & writ tax in
said suit.

J.B. Parker atty.

\$131.⁶⁵

Roxabel, N.C. March 12th 1897

Received of J.B. Parker, Special Commissioner
in suit of Borden, et al. vs. Borden, et al.
the sum of One Hundred Dollars, which
together with the sum of Thirty-one and ⁶⁵/₁₀₀
Dollars paid by said J.B. Parker, Special
Commissioner, for me to Capt. J.J. Borden, makes
the sum of One Hundred and Thirty-one and ⁶⁵/₁₀₀
Dollars, in full of my share of the net
proceeds of the land sold in said suit
which is pending in the ~~County~~ Court
of Southampton Co. Va.

J. J. Borden
^{his}
_{mark}

this is certify that J. J. Borden signed the above instrument
of conveyance in my presence this March 24th 1897

W.C. Livemon
Justice of the Peace
for Bertie County

Mo D Bardin Bond balance

\$ 8.30

1.41

Int from 28 April 1894 to 27 Feb 1897

9.71

Mo D Bardin Bond

19.50

Int from 14 Jan 1895 to 27 Feb 1897

2.48

\$ 31.69

Decr 11th 1891 Recd in 3 ones for mill \$2.25 and cash \$20.00 ^{- in}
all Twenty two Dollars and Twenty five cents in part of this note
J J Darden

March 2nd 1893 Recd 383^{lb} P nutt^s at 3/8¢ is \$11.97 on
this note J J D

April 28th 1894 Paid on this \$2.00 in part leaving
\$8.30 due this day

Feb 27th 1897 Received Nine Dollars and
Seventy one cents for this Bond of Mr J L
Parker Trustee

Jas J Darden

Mr Jas. D. Darden
note to
Jas J Darden
\$40.23

22
Set on Bond

\$ 40.23

On Demand, I promise to pay unto **JAS. J. BARDEN,**
his heirs, executors, administrators, or assigns, the just and full sum of Forty
Dollars and Twenty three Cents.
current money of the United States, for value received, for the true payment of which I
bind my self, my heirs, executors and administrators, firmly by these presents; and
I hereby waive the benefit of the Homestead Exemption as to this debt, obligation,
or contract, with interest from 3rd day of Feby 1891

As witness my hand and seal this 3rd day of Feby in the
year of our Lord one thousand eight hundred and ~~eighty~~ Ninety one

Witness:

R. A. Wyman

John D. ^{his} Barden (Seal.)
mark (Seal.)

Feb 27th 1897 Received Twenty one dollars and 98/100
from for this Bond of Mr J L Parker Trustee
Jas J Dander

Jas D. Bardin
Note to
Jas J Dander
\$19.50

Deed of Trust
to L. C. Dander

On Demand, I promise to pay unto JAS. J. DARDEN,

his heirs, executors administrators, or assigns, the just and full Sum of Nineteen
Dollars and 50 Cts,

current money of the United States, for value received, for the true payment
of which I bind ~~my~~ self ~~my~~ heirs, executors and administrators, firmly
by these presents; and I hereby waive the benefit of my Homestead
Exemption as to this debt, obligation, or contract with interest from 14th
day of January 1895.

As witness my hand and seal this 14th day of January
in the year of our Lord one thousand, eight hundred and ninety Five

Witness:

R. A. Wynn

John D. Darden (Seal.)
mark (Seal.)

Reuben Wright
Feb the 11 1971

Mr Parker

Dear sir

I write you a few line to
let you hear from a gain
I recieve your letter the
the 11 was glad to hear
from you. Mr Parker
you Pay. Capt Gorden
the Seed of trust. there
a least thirty dollars
that the only Seed of trust
there is it. you Pay my
Part of the Duit an dont
Pay nothing els out of it
just as soon you can
get this settle you send
me mine by express
I need it. your truly
J. S. Gorden

[Receipt to be given by County or City Treasurer when Delinquent Land Taxes are paid before sale.]

8⁵⁷
100.....

Office of the Treasurer of the County..... of Amherst
Franklin Va Dec 1....., 1898....

RECEIVED of

Eight

J. B. Parker Special Com (for Julia Borden).....

Dollars and

Fifty one

Cents,

in payment of Delinquent Taxes due on... 2.90..... acres of land for the year... 1895....., as follows:

State Taxes and penalty, - - - - - \$

Interest on State Taxes, - - - - -

County Levies for all purposes, and penalty, - - - - -

Interest on County Levies, - - - - -

Proportionate expense of advertising, and receipt, - - - - -

Total, - - - - - 18.57.

J. R. Edwards, Treasurer.

\$131.⁶⁵

Newsoms, Va. Feby. 18th 1897

Received of J. B. Porter, Special Commissioner,
One Hundred and thirty-one and ⁶⁵/₁₀₀ Dollars,
(\$131.⁶⁵) in full of my share of the purchase
price derived from the sale of the
land of my father, the late James E. Borden,
deceased. Said sum being paid me in accordance
with decree entered Jan'y. 22nd 1897, in
the Chancery cause of Borden, et al. vs.
Borden, et al., pending in the Circuit
Court of Southampton County. I certify
that I have given no deed for, nor any lien
upon, nor is there any lien upon, my
share of said land or fund, and that I am
entitled to receive the whole of the
same.

Sarah B. Glover

* D. F. Glover

Virginia

Southampton County 3 to wit

J. T. A. Bishop a Justice of the Peace in and for the County
aforesaid in the State of Virginia do hereby certify that
Sarah B. Glover and D. F. Glover whose names are signed
to the above writing bearing date the 18 day of Feb 1897 have
acknowledged the same before me in my County aforesaid
given under my hand and seal this 18 day of Feb 1897
I. A. Bishop J. P. ^{Seal}
acknowledged before a notary or magistrate
sworn to me, I will at once send her
a check.

J. B. Porter

\$131.⁶⁵

Newman, Va. Jan'y, 28th / 897.

Received D. H. Parker, Special Com-
missioner in the Chancery suit styled Borden
vs. Borden, finding in the Lib. Cl. of South-
ampton County. The sum of One Hundred
and thirty-one and ⁶⁵/₁₀₀ dollars, in full of
my share of the funds derived from sale
of the land sold in said suit, said sum
being paid me as the assignee of Thomas
Borden, in accordance with decree in
said cause entered Jan'y. 22nd / 897.

W. B. Bryant

witness Richard Howard

8/28⁶⁰

Received of J. B. Porter Special Commissioner the
sum of One Hundred and Sixty-eight
and 60/100 dollars in full of the share
of Luther Borden in the fund in the
hands of the said Commissioner in the suit of
Borden, et al vs. Borden, it also pending
in the Circuit Court of Southampton
County, Virginia. John. H. Drake Esq
for Luther Borden

Witness

Attest

Southampton County Court: March Term 1897
Luther Barden, a minor over the age of fourteen
years. This day, by leave of the Court, chose
John H. Drake for his Guardian, whereupon
the said John H. Drake made oath according
to law, and together with L. J. Drake as his
security, who justified on oath as to his
sufficiency, entered into and acknowledged
a bond in the penalty of Two Hundred Dollars,
conditioned according to law. Which bond
is ordered to be recorded.

Attest: B. F. McLenahan, C. C.

Franklin, Va., April 29th 1897

\$188.⁶⁰

Received of J. B. Parker, Special Commissioner in the
Chancery suit styled Borden vs. Borden, it also,
pending in the Circuit Court of Southampton
County, the sum of One Hundred and twenty-
eight and ⁶⁰/₁₀₀, in full of the share of Chas. L.
Borden in the fund in said suit, said sum
being paid me as the assignee of Chas. L.
Borden in accordance with decree in
said cause entered Jan'y 22nd 1897,

E. F. Whitfield

Borden. it also

as. }

Borden. it also

Final Report of
Special Cases.

To the Hon.R.R.Prentis, Judge of the Circuit Court of Southampton County, Virginia.

The undersigned, your special Commissioner in the suit of Barden et als., vs. Barden, et als, now pending in said court, beg leave to report that in accordance with the instructions contained in said decree he has collected from W.B.Bryant the purchaser of the land in said suit, the whole of the purchase money bid for the same, \$765., together with \$3.85 interest on the same. That he has given the said W.B.Bryant a good and sufficient deed, with special warranty, for the said land; and that he has paid out the money received by him as shown by the following statement.

STATEMENT.

Amount of purchase price of land,	\$765.
Interest on same for one month,	3.85

DR.

To paid for advertising sale,	1.00
" " auctioneer at sale,	5.00 ✓
" " clerk's fees,	12.73 ✓
" " Sheriff's fees,	3.00 ✓
" " Writ tax and taxed fee,	16.50 ✓
" " Commissioner in Chancery,	5.00 ✓
" " Commissioners to assign dower,	3.00 ✓
" Commissions on receipts,	24.37 ✓
" paid attorney's fee directed by decree,	35.00 ✓
" " " " for writing deed,	5.00 ✓
" " delinquent taxes for 1895,	8.51 ✓
" " John D. Barden, 1/5 balance,	129.95 ✓
" " Sarah B. Glover, " "	129.95 ✓
" " W.B. Bryant Assignee of Thos. Barden,	129.95 ✓
" " John H. Drake, Guardian of Luther "	129.95 ✓
" " C.F. Whitfield Assignee of Chas. "	129.94 ✓
	\$768.85
	\$768.85

The above statement is supported by vouchers herewith filed and in the case of the payment to C.F. Whitfield the deed from Chas. L. Barden to him for his interest in said land is herewith filed as an evidence of his right to receive the same.

Respectfully submitted,

J. C. Parker
Special Commissioner

Borden. it als
or {
Borden. it als

Deed of Bargain and Sale.

Chas. L. Borden

To

Chas. F. Whitfield

Examined and verified

Admitted to Record this 23rd day of
Dec, 1896

Recorded D. B. 44, Page 364-

Genl Index 697-1145
Examined and verified.

✓ Clerk.

\$-----

Tax, Paid, \$-----

Fee, \$-----

\$-----



This Deed, Made this 12th day of December, in the year
one thousand eight hundred and ninety six, between

Chas L. Barden

of the first part, and

Chas. F. Whitfield

of the second part—

Witnesseth: That in consideration of the sum of One Hundred
& Ten Dollars,

the said

Chas L Barden

do grant unto the said

Chas F Whitfield

with GENERAL WARRANTY, all

His right title and interest
in the lands of Jas. E. Barden
Said farm being a one fifth undivided
interest subject to the widows dower
Said farm said to contain Two
Hundred & ninety Three (293) acres
more or less bounded by the lands
of A. B. Thorpe A. D. Bryan,
J. B. Womell Geo. W. Whitfield
Others.

The said Chas. L. Barden
covenant that he have the right to convey the said land to the grantee; that he
has done no act to encumber the said land; that the grantee shall have quiet possession
of the said land, free from all encumbrances, and that he, the said party of the
first part, will execute such further assurances of the said land as may be requisite.

Witness the following signature and seal--

Charles L. Barden
mark
SEAL
SEAL
SEAL

STATE OF VIRGINIA,
County of Southampton } To wit:

I, Richard Howard a Notary Public
for the county aforesaid, in the State of Virginia, do certify that

Charles L. Barden
whose name is signed to the writing hereto annexed, bearing date the 12
day of December, 1896, has acknowledged, the same before me in my
county aforesaid.

Given under my hand this 12 day of November, 1896

Richard Howard N.P.

MEMO.—To be acknowledged before any officer authorized to take acknowledgments.

COUNTY OF Southampton, To wit:

In the office of the Clerk of the County Court for the County of Southampton
the 23 day of December, 1896, this deed was presented, and, with the
certificate annexed, admitted to record.

Teste:

B. F. McLenahan, C.C. Clerk

Borden, it also
as, }
Borden, it also

Report of Sale
by
Carrie J. B. Parker

1897 18th Jan. Filed
L. A. Gay C. C.

Respectfully submitted,

See his correspondence to do this until the sale is confirmed.

but all seem and take good as soon as possible, but cannot confirm
again that he is anxious to have the sale confirmed as he wishes to
to date of the purchase price has not been paid, but purchase

holders, from consideration recommending confirmation of the sale.

confirmation, in substance, who reported purchase of the land and

the sale, the land not having been valued in the
of the sale of the land and fifty-five dollars, and

the purchase price became the purchase of the land

the purchase price attached as a part of the report.

the purchase price for sale, a copy of the

the purchase price and after so certified, it for

the purchase price and after so certified, it for

the purchase price of the land, to sell certain land in the city and pro-

the purchase price and after so certified, it for

the purchase price and after so certified, it for

the purchase price and after so certified, it for

the purchase price and after so certified, it for

To the Hon.R.R.Prentis, Judge of the Circuit Court of Southampton County, Virginia.

The undersigned, your Special Commissioner appointed by decree entered March 25th 1896 in the chancery suit styled Barden, et als. VS. Barden, et als. to sell certain land in the bill and proceedings in said suit described, respectfully reports to the court that pursuant to said decree he advertised said land for sale on the 21st day of December 1896, and after so advertising it for more than thirty days he offered the same for sale, a copy of the said advertisement being hereto attached as a part of this report. At the said sale W.B. Bryant became the purchaser of the said land at the price of Seven hundred and sixty-five dollars, that being the highest bid made therefor. This your Commissioner thinks is a most excellent sale, the land not having been valued by the Commissioner in Chancery who reported thereon at but Six hundred Dollars. Your commissioner recommends confirmation of the sale. No part of the purchase price has yet been paid, but purchaser says that he is anxious to have the sale confirmed as he wants to pay all cash and take deed as soon as possible, but cannot consummate his arrangements to do this until the sale is confirmed.

Respectfully submitted,

J. O. Parker
Special Commissioner.

Virginia:

In the Circuit Court for Southampton County, March Term, 1895.

Barden, et als.

vs } 1st Decree
Barden, et als.

This day this cause came on to be heard upon the bill and exhibits filed, general demurrer thereto, the answer of the infant defendants and of J. L. McLemore Guardian ad litem appointed at rules for the infant defendants and general replication thereto, and was argued by Counsel. Upon consideration whereof the Court ^{doth} over-rule the said demurrer, and doth adjudge, order and decree that one of the Commissioners of this Court take and report to this Court:

1st. An account of the transactions of R. B. Thorp as administrator of the said James E. Barden.

2nd. An account of the debts due by said deceased or his estate, with their order of priority and dignity, and which of them contain homestead claims in the evidences thereof.

3rd. An account of the annual and for simple value of the real estate left by the said James E. Barden.

4th. Whether the real estate belonging to said estate is susceptible of division in kind among the five children of the said deceased, with

the evidence upon which he bases his conclusion.
5th. Any other matter which the Commissioner
may deem pertinent or which he may be
requested to report on by anyone interested
in this suit.

And said Commissioner shall report to this
Court at the next Term thereof.

A Copy.

Teste: L. A. Gay C. C.

Bardum, et als.

vs } 1st. Deaver

Bardum, et als

Barden et al
v. {Report of Comr.

Barden et al

1895. Sept. 5th filing
L. H. Gay L. C.

JAMES L. MCLEMORE,

Attorney-at-Law,

COURTLAND, VIRGINIA.

Everett Wadley Co., Stationers and Printers, Richmond, Va.

Commissioner's Office,

Courthouse
Johannesburg, Va., May 27 1895

To John B. Borden & Sarah B. Glover, Thos. B. Borden
A.B. Thorp Adm. of James B. Borden decd. Julia Webb for-
merly Julia Borden, Chas L. Borden & Rutha B.
Borden the last two infants.

You are hereby notified that I have fixed upon the 24 day of June
next, if fair, if not, the next fair day thereafter (Sunday excepted), to take and settle, at my office,
the following accounts, to wit:

- 1st. An account of the transactions of A.B. Thorp as Admin-
istrator of the said James B. Borden.
- 2nd. An account of the debts due by the said decedent on his
estate with their order of priority & dignity which of them con-
tain Homestead claims in the evidence thereof.
- 3rd. An account of the annual & fee simple value of the
real estate left by the said James B. Borden.
- 4th. Whether the real estate belonging to said estate is susceptible
of division in kind among the five children of the said
decedent with the evidence upon which he bases his conclusions.
- 5th. Any other matter which the Commissioner may deem pertinent
on which he may be requested to report on by anyone in-
terested in this suit.

required to be taken by a decree of Southampton Circuit Court, rendered at the March
term, 1895, in a suit in chancery depending in said Court, in which you are parties, plaintiffs and
defendants; at which time and place you are required to attend.

Given under my hand as Commissioner in Chancery of said Court the day and year first

I acknowledge legal service of this

Commissioner's Office,

Courtroom
Jenning, Va., May 27 1895

To John B. Borden & Sarah B. Glover, Thos. B. Borden
N. B. Thorp Adm. of James B. Borden decd. Julia Webb for-
merly Julia Borden, Chas L. Borden & Ruthen B.
Borden the last two infants.

You are hereby notified that I have fixed upon the 24 day of June
next, if fair, if not, the next fair day thereafter (Sunday excepted), to take and settle, at my office,
the following accounts, to wit:

- 1st. An account of the transactions of A. B. Thorp as Admin-
istrator of the said James B. Borden.
- 2nd. An account of the debts due by the said decedent on his
estate with their order of priority & dignity which of them con-
tain Homestead claims in the evidence thereof.
- 3rd. An account of the annual & fee simple value of the
real estate left by the said James B. Borden.
- 4th. Whether the real estate belonging to said estate is susceptible
of division in kind among the five children of the said
decedent with the evidence upon which he bases his conclusions.
- 5th. Any other matter which the Commissioner may deem pertinent
or which he may be requested to report on by anyone in-
terested in this suit.

required to be taken by a decree of Southampton Circuit Court, rendered at the month
term, 1895, in a suit in chancery depending in said Court, in which you are parties, plaintiffs and
defendants; at which time and place you are required to attend.

Given under my hand, as Commissioner in Chancery of said Court, the day and year first
aforesaid.

J. L. W. Lemore

Commissioner.

To the Sheriff of Southampton County to execute.

To the Honorable Robert R. Prentiss, Judge, &c.

Your Commissioner to whom was referred the taking of the several accounts called for by the decree of March term 1895, entered in the Chancery cause of Barden et als. vs. Barden et als. begs to submit the following:- 1st.---As to the transactions of A. B. Thorp admr. of James E. Barden dec. ; it appears from the last account filed by the admr. that he was indebted to the estate in the sum of \$160.42 as of Aug. 1st. 1881, but he has exhibited to your Commr. a receipt signed by Julia Barden for that amount paid to her as of Decr. 27, 1881, which she says, is in full of amount due her by said administrator. This amount was paid to her by virtue of an order of court as a homestead for her self and her minor children, and is still in her hands as such.

2nd.---As to the debts outstanding against the estate, none has been proved before your Commr. but he is informed there are several debts due by the estate, all of which however are barred by the statute of limitations.

3rd. --From the evidence before him, your Commr. would say that the fee simple value of the real estate is \$450.00: and the annual value not to exceed \$50.00, this opinion your Commr. bases upon the written depositions of witnesses familiar with the land which evidence is herewith returned and made a part of this report. From the same depositions, he would say that the real estate is not susceptible of division in kind among the five children of the decedent without materially injuring the value of the entire tract, and for the following very plain reasons: -The tract contains only acres, with a small house and to divide the property into five parts would practically render the entire farm valueless, as all the tracts thus divided would be so small as to be ^{useless} for farming purposes, and some of them would have no timber standing thereon with which to fence the land. For these reasons your Commissioner is of the opinion it would ^{be} far better to sell

The witness E. L. Ferguson being first
duly sworn deposes & says.

Q. 1. What is your age, residence & do you
know the land in the bill & proceedings mentioned.
of Barden et al. vs. Barden et al.

A. I am 71, yrs, I live in Southampton County
near the land in question & know it as well as
I know my own.

Q. #2. You know ~~the~~ all the children & heirs of James
E. Barden & the land, can it be divided between
those entitled to it without materially injuring
the value of each interest.

A. No sir I don't think it can.

Q. 3. Do you think it would be to the interest
of all parties to have a sale & division of
the proceeds?

A. I do.

Q. 4. Have you any interest in the land or the
parties to the suit?

A. No sir.

Q. 5. What would you consider a fair cash value
of the farm, not including the down which?

A. Not more than \$450.⁰⁰ fee simple, the
annual value I think not over \$50.⁰⁰

And further this deponent says it is not

E. L. Ferguson

(over)

The witness J. D. Darden being first
duly sworn deposes that,

I am 50 yrs of age live near Newsum
know the land in the bill mentioned -

Q. 1 You have read the deposition of E. C. Ferguson
do you concur with him in the opinions
as expressed therein?

A I do.

And further this deponent says that

Jas D. Darden

State of Virginia,

County of Southampton, --To wit:--

This day E. C. Ferguson, and Jas. D. Darden personally appeared
before the undersigned a Commissioner in Chancery of the Circuit Court
for the County and State aforesaid, and made oath that the statements
contained in the foregoing depositions are true to the best of their
belief

Given under my hand this 26th. day of Aug. 1895.

Jas. L. Moore
Commissioner



This Deed, Made this 27th day of November, in the year
one thousand eight hundred and ninety six, between

Thomas Barden

of the first part, and

Willie B. Bryant

of the second part—

Witnesseth: That in consideration of the sum of One Hundred
& Ten & no/100 Dollars,

the said Thomas Barden

do ~~th~~ grant unto the said

Willie B. Bryant

with GENERAL WARRANTY, all

His right title and interest in
the farm known as the Jas. E.
Barden Place situated in
Newsoms District Southampton Co
Virginia said to contain (290)
Two Hundred & Ninety acres more
or less bounded by the lands of
A. D. Bryant A. B. Thorpe E. C. Ferguson
and others,

The said Thomas Barden
covenant that he has the right to convey the said land to the grantee; that he
has done no act to encumber the said land; that the grantee shall have quiet possession
of the said land, free from all encumbrances, and that he, the said party of the
first part, will execute such further assurances of the said land as may be requisite.

Witness the following signature and seal--

Thomas Barden
his
mark




STATE OF VIRGINIA,
County of Southampton } To wit:

I, Richard Howard a Notary Public
for the county aforesaid, in the State of Virginia, do certify that Thomas Barden
whose name is signed to the writing hereto annexed, bearing date the 27
day of November, 1896, has acknowledged, the same before me in my
county aforesaid.

Given under my hand this 27 day of November, 1896

Richard Howard
Notary Public

MEMO.—To be acknowledged before any officer authorized to take acknowledgments.

COUNTY OF Southampton, To wit:

In the office of the Clerk of the County Court for the County of Southampton
the 28 day of Nov, 1896, this deed was presented, and, with the
certificate annexed, admitted to record.

Teste:

B. F. McLeod, C. C., Clerk.

Deed of Bargain and Sale.

Thomas Bardens,

To

Willis B. Bryant

Admitted to Record this *28* day of
Nov, 189*6*

Recorded D. B. *44*, Page *344*
Cur Index 677-637
Examined and verified.

✓

Clerk.

\$-----

Tax, - - - - \$ *paid*

Fee, - - - -

\$-----

CLERK'S RECEIPT.

120

No. 120

DEEDS.

Grantor.....

Thos Barden

Grantee.....

Willie Bryant

Consideration, - - -

\$110⁰⁰

Amount of tax, - - -

*Due**\$1²⁵*

When admitted to record.....

Nov 28 1896

Received (date).....

B F M Lumsden

Clerk.

Borden. it also

四. 三

Borden, it als

Petitioner J. W. B. England

1897. 18th Jan. (Filed)

L. A. Gay b. b.

Subscribed and sworn to by Wm. B. Bryant
before me in my Office this 18th day
of January, 1897.

2. R. Gray 5-5.

To the Hon. R. R. Prentiss, Judge of the
Circuit Court of Southampton Co.,
Va.

Your petitioner, W. B. Bryant, of
Southampton County, Va., respectfully
represents to the Court that since
the institution by Jas. D. Borden
and Sarah Glover of a chancery
suit in your court for the purpose
of having the land of which they
& others were ~~once~~ joint owners
to wit, the land of which James E. Borden
died seized and possessed, divided be-
tween the said joint owners thereof,
that your petitioner has bought
the interest of Thos. Borden in
said land, it being an undivided
one fifth interest, as shown by deed
dated November 27th 1896, from said
Thos. Borden to your petitioner,
which deed is recorded in the Clerk's
office of the County Court of South-
ampton County, in Deed Book
44, page 344, which deed is ~~by~~
herewith exhibited marked "Exhibit A"
& prayed to be read as a part of this
petition. By reason of the above
facts your petitioner prays that the
share of the said Thos. Borden
in said land, which has since been
sold by your order in said suit, be
paid to your petitioner instead of said
Thos. Borden.

W. B. Bryant

To center of the right hand ^{lane} fence
from the house to E C Fergusons
line near the front gate then nearly N.W.
to the beginning corner, supposed
to be about 30 acres.

Nov 30th / 95

E. C. Ferguson

A. D. Bryant

Test

J. A. Bishop

W. H. Whitley
marks

Commissioners ^{for} for allotting
Dower. A. D. Bryant \$1.00
E. C. Ferguson \$4.00
W. H. Whitley \$1.00

In pursuance of the Circuit
Court Sept term, we have
allotted and set aside the dower
of Julia Webb formerly widow
of Jas E Barden decd, as follows,
Beginning at Stob a corner for E
C Fergusons In said Barden tract
thence East to corner for Barden
& A D Bryant in ^{E C} Fergusons line
thence North to Stob corner for
Barden in A D Bryant line. thence
Southwest to post oak a corner for
A D Bryant in Bardens line
thence near same course to perpendicular
tree in field then to Stob 35 yds
beyond said tree a corner. then nearly
Southeast to dead peach Tree then same
course with apple tree row 3rd row
from snake house to the 5th old tree
a corner then around Stables & Barn

In the Circuit Court of Southampton County.
September Term 1895.

Barden et als.

vs.

Barden et als.

This day this cause came on again to be heard upon the papers formerly read & upon the report of Commr. J. L. McLemore filed Sept. 5th. 1895. and upon the answer of Julia Webb. This day filed by leave of Court, with general replication thereto, and ^{was} argued by Counsel.

Upon consideration whereof, the Court doth adjudge, order & decree that L. B. Ferguson, A. D. Bryant & West Whitley be & they are hereby appointed Commissioners, who after being first duly sworn, shall examine the Land in the bill & proceedings mentioned and ascertain if dower in said Land can be assigned to the Widow in kind, and if so to so all of it, and in either case to report to this Court, and there being no exceptions filed to the report of Commr. McLemore the Court doth confirm said report, and by consent of parties in open Court it is ordered that this be made a vacation cause.

A Copy. Test: L. A. Gay C. C.

Borden et als.

vs } 2nd Decem

Borden et als.

In Test

page 35

Virginia. Southampton County. To wit
J. A. Bishop a justice for the said County do certify that
C. C. Ferguson. A. D. Bryant and West-Whitley have
this day made oath before me that they will faithfully
and impartially execute the within order of the circuit
Court of Southampton County
given under my hand this 14 day of Nov 1855.

J. A. Bishop J. P.

Barden et als

vs { Sumner

Barden et als

1894, 2nd Sept Rules
in let.

Executed Sept. 15th—
1894 by delivering a
copy of this Decree to
cust of the within
Mentioned Person

J. D. Mowder
for J. M. Williams
Shff

15
Parker & Co.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON

*Thomas B. Barden A.
B. Thorpe Admin of Jas E. Barden decd Julia
Webb formerly Julia Barden Chas L Barden
& Lillian B. Barden the last two infants
by J. L. McLenore their Edw ad litem*

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 *3rd* Monday in *September* next, to answer a Bill in Chancery
exhibited against *them* in our said Court by *John D. Barden &
Sarah B. Glover*

And this *they* shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, T. M. HOWARD, Clerk of our said Court, at the Courthouse, this *29* day of

August, 1894, in the 11^{*9*}th year of the Commonwealth.

TESTE:

T. M. Howard, C. C.

Barden et al.
v. Benson
Sonad
Barden et al.

The Answer of J. L. W. Leuore Esq.
ad litem for the infant defendants Charles
L. & Luther B. Barden in a suit in
Chancery pending in the Circuit Court of
Southampton County styled Barden et al.
vs Barden et al.

These defendant by & through
their Jdn ad litem, for answer to the
said bill or so much thereof as they
are advised they ought to answer answer-
ing say, That being infants they
know nothing of their rights in
the premises, but trust & confide the
same to the protection of this Court
and having fully answered they pray
hence to be dismissed with their costs
etc.

1894 2nd October Rules

J. L. W. Leuore Guardian
ad litem

Barden et al

vs. $\frac{3}{4}$ Sumner

Barden et al

1895 June 24.

Executed June 21st
1895 by delivering a
copy of this Decree
to the Clerk of the Court

R. D. Moore dep.
for Minister
Shiff

June 21st 1895-

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—Greeting:

WE COMMAND YOU TO SUMMON

Elioth C. Ferguson

J. L. McLeamon Clerk in Chy. Court.
to appear before the Judge of our County Court of Southampton County, at the Courthouse thereof,

on the *24* day of *June* Term, 189*5*, to testify and the truth to

speak on behalf of *Julia Webb (formerly Barden) to her*
in a certain matter of controversy in our said Court depending and undetermined between

John D. Barden et al., plaintiff*s*, and

M. B. Tharp et al., defendant*s*.

And this *he* shall in no wise omit, under the penalty of the law. And have then there this writ.

J. L. McLeamon Clerk in Chy. Court.
Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this *15th* day
of *June*, 189*5*, in the *119*th year of the Commonwealth.

TESTE:

Jas. L. McLeamon Clerk C. C.

* including, a Mason and attorney for the two attorneys says there is some for depending the interests in this suit

Bundus n ali

add 3

Bardonia is also

Amicus of Mrs
Julia Webb

The Court would have been bound to grant
him relief either making an allowance
for services to and relief as a
May have occurred in appointing him
being

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Thomas J. Smith

The answer of Julia A. Webb to a bill
in chancery filed in the circuit court of
Southampton by John D. Barden and
Sarah, A. Glover against her and others

This defendant for answer
to the said bill on or much thereon
as she is advised it is material for her
answer answering says that the tract
of land now in controversy containing
209 acres was apportioned to her as the
widow of James E. Barden died and
her infant children and the
children of James E. Barden by the
decree of the county of Southampton
to be held as a homestead by the
decree entered at the March term
1881 and that she and the children
have held the same under the
said decree until this court at its
March term 1891. virtually set
aside the decree entered in the
county court as a nullity and ordered
a certain account to be taken looking
to a division or sale of this land
she now comes into court and
asks that commissioners may be
appointed to sell her share in
the above tract of land and that

The joint answer of Charles L Barden
an infant 19 years old and Luther D
Barden an infant 17 years old by J. L.
McLennan their guardians ad litem
appointed for that purpose to a bill
in chancery by John D Barden and
Sarah Glover vs them and others and
indemnity answer of infants

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 of his own
personal knowledge he knows nothing
of the facts set forth in the plaintiffs
bill, but from what he is informed
by his two infant wards and the facts
set forth in the plaintiffs bill there
can be no sale or division of the
land prayed for in the plaintiffs bill
until the expiration of the homestead
which does not occur until the 1st of
August 1898 This defendant guardian
and the two infant wards who also
answer and sign this answer state
the following facts

At the November term 1880 of
the county court of Southampton Julia
Barden widow of James E. Barden
files a petition in behalf of herself

and her six infant children to
wit John B. Barden, Peter L. Barden
Sarah B. Barden, Thomas B. Barden
Charles L. Barden and Lillian B.
Barden ^{an appointment of a committee} asking an ~~allowance~~ ^{in the}
real and personal estate which her
husband James E. Barden died seized
and possessed and as to wit the November
term 1880 Elliott C. Ferguson, George
Whitfield and Albert D. Bryant were
appointed commissioners to appraise the
same and on the 18th of February
1881 ~~the said~~ commissioners reported
to court that they had appraised to
her and children a Tract of Land
containing 209 acres valued at
\$1000 and personal estate of the value
of \$303.91 ~~cts~~ ^{cts} total value \$1303.95 ~~cts~~
This report was returned to the
February term 1881 of the county
court of Southampton and was
confirmed and was confirmed
at the March term 1881, all of which
will more fully appear by a copy of
the record in the proceedings in the
county court of Southampton which
the plaintiffs have made a part of
their bill and which this guardian
and his wards make a part of this

ansured. It is further answered that
after the said report ~~confirming~~ was
confirmed Julia Barclay the widow
took possession the said real and
personal estate as a homestead for
herself and children who were then
all infants and it has been so held
ever since ^{that time} Julia Barclay the widow
has married sometime since and
has ceased by virtue of the law to
have any interest in this homestead
all the children but two have
arrived at the age of twenty one
and their interest has ceased for the
time being the only persons now
holding this property are the two
infants defendants to wit Charles
L. Barclay ~~son~~ ^{son} who will be of
age the 19th of November 1896 and
Lillian D. Barclay who will be of
age the 1st of August 1898 at
that time to wit the 1st of August
1898 when she last the last of
the homesteaders to wit Lillian D.
Barclay comes of age can this estate
be sold or divided the interest of
Charles L. Barclay will cease on the
19th of November 1896 and the interest

of Arthur J. Bardine will expire
on the 1st of August 1898 when
this property can then be divided or
sold as to the court may seem best
and having fully answered these
defendants pray leave to be dismissed
with their costs etc

signed

signed

Charles L. Bardine

Arthur J. Bardine

Attorneys at Law

Bardine vs etc

etc 3

3

Bardine vs etc

Answer of J. L. McArthur

garden etc etc etc etc

C. L. & J. D. Bardine v

Answer of defendant

Borden, it also
 vs. 4th decree
 Borden, it also.

We agree to this
 decree.

J.C. Parker
 atty for Plaintiffs
 Shanks & Son
 atty for defendants

Entered Jan'y 22, 1897
 Robert J. Davis

Entered page 166

Declaratory of title.

Declaratory of title.

Ad.

Ad. Justice.

reference to court that before gone under title.

held in

the said land, the said Commissioner is here-

and, has, since the institution of this suit, owned the interest in

ownership in the same, and is accordingly to the Court since W.D. Hiv-

that as soon as he, the said W.D. Hiv, shall have completed the

work on the interest in the same, the said Commissioner is here-

the Court will direct the said Commissioner to the said W.D. Hiv

informed a receipt and statement for each interest, as well as

local representatives. And the said W.D. Hiv, who is hereby

known, that the said W.D. Hiv, who is hereby, as a condition of

being and now one party to the said W.D. Hiv, who is hereby, as a

condition of being, he shall receive the same, and the said Commissioner

will be the said Commissioner, who is hereby, as a condition of

In Vacation: Circuit Court of Southampton =
town County, January 22nd 1897.

Barden, et als.

VS.

4th decree.

Barden, et als.

This day this cause *by consent of parties here entered of record* came on to be heard in vacation upon the papers formerly read and upon the report of Commissioner J.C.Parker, filed January 18th 1897, to which report no exceptions have been filed, and ~~the same~~ upon the ^{li}petition and exhibits supporting the same filed by W.B.Bryant, and was argued by counsel.

Upon consideration whereof *and by consent of parties, by counsel* the court doth confirm said report and the sale reported therein, and doth further adjudge order and decree that J.C.Parker recieve from the said purchaser of said land the purchase price for the same, and after paying all costs of this suit, including a fee to the said J.C.Parker as Attonney of thirty-five dollars (\$35.), and reserving sufficient to pay future costs, he shall divide the remainder into five equal parts and pay one each to John D.Barden, Sarah B.Glover, Thomas B.M Barden, Chas.L.Barden and Luther B.Barden, or their assigns or legal representatives. And the said J.C.Parker, who is hereby appointed a special commissioner for that purpose, is further ordered and directed by the court to make to the said W.B.Bryant a good and sufficient deed, with special warranty, for the said land as soon as he, the said W.B.Bryant, shall have completed the payment for the same. And it appearing to the Court that W.B.Bryant, has, since the institution of this suit, bought the interest of *Thomas* Barden in said land, the said Commissioner is hereby ordered to pay the share of the said *Thomas* Barden in said fund to the said W.B.Bryant. And said Commissioner shall report to court what he has done under this decree.

Robert I. Hunt
To the Clerk of the
Circuit Court of Southampton County.

Barden, et als.

vs.) 3rd Decree.

Barden, et als.

This day this cause came on again to be heard upon the papers formerly read and upon the report of Commissioners E.C. Ferguson, A.D. Bryant and J.W. Whitley assigning dower to Julia Webb (formerly Barden) widow of James E. Barden, deceased, filed December 16th 1895, to which report no exceptions have been filed, and was argued by counsel.

Upon consideration whereof the court doth confirm said report and the assignment of dower contained therein, and doth further adjudge, order and decree that J.C. Parker, who is hereby appointed a special commissioner for that purpose, proceed as soon as in his judgment it be advisable, to sell the remainder of the tract of land in the bill and proceedings mentioned and the reversionary interest of the heirs in that portion just assigned as dower (selling it all together), upon the following terms, to-wit, one-third cash and the balance in one and two years from day of sale, bond to be given for the deferred payments and title retained until the property paid for, but with privilege to purchaser to pay all cash and take deed as soon as sale confirmed. He shall sell the property at public auction to the highest bidder, at the Courthouse on some court day, and shall advertise the time place and terms of said sale for at least thirty days before selling. But before entering upon the discharge of his duties under this decree he shall enter into a bond with security deemed sufficient by the clerk of this court, ~~and~~ in the penalty of \$750. conditioned for the faithful discharge of his duties under this decree.

2

Borden, it also.

vs. } 5th and Final decree.

Borden it also

This day this cause came on again to be heard upon the papers formerly read and upon the report of J. B. Parker, Special Commissioner, filed ~~during this day~~ ^{this day} April 5th 1898, to which ~~no~~ ^{no} exceptions have been filed, and was argued by counsel.

Upon consideration whereof the court doth confirm said report, and it appearing that there is nothing further to be done in this cause it is ordered that the same be ~~dismissed~~ ^{removed} from the docket.

42 a 7

Barden, et als.

VS.) First Decree.

Barden, et als.

~~November 1894~~

To be entered.

Robert R. Meents
Mar. 26, 1895.

Barden, et als.

VS.) First Decree.

Barden, et als.

This day this cause came on to be heard upon the bill and exhibits filed, ^{the infant defendants and of} general demurrer thereto, the answer of ^{appointed as well as} J.L. McLe-
more Guardian adlitem, ^{general} for the infants defendants and replica-
tion thereto, and was argued by counsel.

Upon consideration whereof the court doth over-rule the said demurrer, and ~~being of the opinion that the minor children of the deceased James E. Barden cannot hold the property left by the deceased and mentioned in the bill under the homestead law to the exclusion of the adult children who cannot claim the homestead, the court~~ doth adjudge, order and decree that one of the Commissioners of this court take and report to this court,

- 1st, An account of the transactions of A.B. Thorp as administrator of the said James E. Barden.
- 2nd, An account of the debts due by said deceased or his estate, with their order of priority and dignity, and which of them contain homestead waivers in the evidences thereof.
- 3rd, An account of the annual and feesimple value of the real estate left by the said James E. Barden.
- 4th, Whether the real estate belonging to said estate is susceptible of division in kind among the five children of the said deceased, with the evidence upon which he ~~makes said report~~ bases his conclusion.
- 5th, Any other matter which the Commissioner may deem pertinent or which he may be requested to report on by anyone interested in this suit.

And said Commissioner shall report to this court at the next

Borden. it also
vs. } 2nd Decur
Borden. it also

Sept. Term 1895-
To be returned.
Robert R. Huntley.
Sept 25, 1895.

Borden. it also.

vs. }

Borden. it also.

This day this cause came on again
to be heard upon the papers formerly
read upon the report of Commr. J. L.
McLemore filed Sept. 1895; and
~~this~~ ^{this day filed by leave of Court with general replication thereto,}
upon the answer of Julia Webb,
and was argued by counsel.
Upon consideration whereof, the court
doth adjudge, order & decree that E. C.
Ferguson, A. D. Bryant & West
Whitley be & they are hereby appointed
~~commissioners~~ ^{commissioners}, who after being first duly sworn, shall
~~examine the~~ ^{examine the}
land in the bill of proceedings mentioned
ascertain if dower in said land
can be assigned to the widow in
kind, or if so to so allot it, and in
either case to report to this court.
And there being no exceptions filed to
the report of Commr. McLemore the
court doth confirm said report.
and by consent of parties in this
court it is ordered that this be
made a vacation cause.