1901-08 Southampton County Chancery - de Bordenave, Ernest A. etals vs de Bordenave, Fulgence (et al)

Sues to have the defendant "either by deed of trust or mortgage" raise sufficient funds to upgrade property

Minors { de Bordenave, Livy S.
by: Pretlow, J. D.
Lankford, Martha A.
" , Menalcus

de Bordenave, Martha (wife)

Defendants by the sols

on } Bill
 } Exhibit

Defendants to answer

1 Feb Rule

To the Honorable C. W. Hill judge of the circuit Court of Southampton in chancery sitting

Humbly complaining your Orators Ernest A. Debordenave an infant aged seventeen and Livy S Debordenave an infant aged fifteen years who sue by J. D. Butler their next friend and Martha A. Lankford a married woman who sues by her husband Mundeus Lankford and next friend shew unto your Honor that in the year 185— William Lankford of Southampton County departed this life having first duly made and published his last will and testament which was duly admitted to probate in the county court of Southampton and a copy of which is herewith filed marked exhibit A and prayed to be taken as a part of this bill Your Orators further shew unto your Honor that by the said will the said William Lankford devised and bequeathed all his estate both real and personal to Martha A Lankford and Martha A. Debordenave

After devising one half of his estate to Martha A Lankford, He devised as follows "I loan to Martha A Debordenave the other half of my said estate both real and personal, but not in any way subject to the control of her husband or liable for his debts, but I loan the said property to the said Martha. A. Debordenave during her lifetime, should my said niece leave issue at her decease then I give and bequeath the said property to her issue and their heirs forever but should she die without issue then I give and bequeath the said property or so much thereof as may remain to Martha. A. Lankford and if not to her children and her heirs forever."

Your Orator shows further unto your Honor that the estate left by the said William Lankford has been long since divided between Martha A Lankford and Martha. A. Debordenave And that the said Martha. A. Debordenave had allotted to her in the said division a valuable tract of land lying on and near Blackwater river in Southampton county containing six hundred and seventy seven acres and worth some six thousand dollars, Your Orators show further unto your Honor that the two infant defendants Ernest A. Debordenave and Lucy S Debordenave are the only children of Martha A Deardman and entitled to the said tract of land in fee simple in the event of their survival of their mother should they die without issue their mother surviving them to Martha. A. Lankford and issue

Your Orators show further unto your Honor that this property is now depreciating in value every year it is now some twenty five years since their Mother came into the possession of this plantation and nothing has been done to keep the house in repair, to open the ditches and keep them scoured out or to keep the fences up; they have importuned their mother again and again not to let this valuable property go to waste and in which they have so large an interest being a fee simple in Remainder and her answer was that she was exceedingly anxious to do so to put this property in thorough repair and turn it over to them at her death unimpaired in value but that neither she or her husband has the means either of preventing the house from falling to ruin or of putting the farm in a proper condition for tillage, Your Orators are well aware that it is the duty of the life tenant to preserve the property from waste and turn it over to the remainderman unimpaired in value and when the life tenant cannot do so then upon application to a court of chancery the court will see to it that the property is preserved from waste and so protect the interests of both the life tenant and remainderman

In Tender consideration whereof and inasmuch as your Orators are without adequate relief at Law and only entitled to relief in a court of chancery where such matters are peculiarly cognizable they therefore pray that Martha A. Debordenave and her husband Fulgence Debordenave who is made a party defendant pro forma, may be made parties defendant to this bill and that the court would compel them a true and perfect answer make to the allegations therein contained as if they had been thereunto more fully and specially interrogated but answer under oath to the said bill is hereby waived And if it should appear from answer or otherwise that the life tenant Martha A. Debordenave is unable to make the proper repairs to the dwelling houses and out houses and to put the dwelling in a habitable condition for the family and put the farm in a proper condition for tillage. Then that the court would authorize the said life tenant Martha. A. Debordenave either by Mortgage or deed of trust on the said tract of land to raise a sufficient sum of money to place the house in good condition as a residence for the family and place the farm in a proper condition for tillage, and that the court would grant such other and general relief the premises considered as equity may dictate and the nature of this case may require, and your Orators hereby gives notice to all the parties interested that they shall ask the court to allow a reasonable fee to be paid to their attorneys Messrs Shands & Son for services rendered in this case, and as in duty bound your Orators will ever pray &c

Shands & Son

206

de Bordenave. by &c

vs } State Rules.

de Bordenave & wife

1 -728

Ernest A. de Bordenave. and
Luiz S. de Bordenave. two infants
by J. D. Prellow. their next friend. and
Martha A. Lankford. a married woman.
by Menalcus Lankford. her next friend. Plffs
Agst
Fulgence de Bordenave and
Martha A. de Bordenave his wife Defts

1893. Jany 20th Process issd to 1st Feb: Rules:
„ 1 Feb: R: Process Executed - Bill & Ex: filed.
~~„ 2 „ „~~ decree nisi
„ 2 „ „ Answer of M. A. de Bordenave
filed - Genl. Rep: Bill taken
for Confessed as to the other Defts:
and Cause set for hearing.

De Bordenave, by &c

Vs } Summ:

De Bordenave wife

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1893. 1st Feb: Rules
Cir: Ct:

Executed by delivering a copy of this Summ to each of the within named parties
Feb 4th/92

J. W. Williams
Shff

**THE COMMONWEALTH OF VIRGINIA,**

TO THE SHERIFF OF SOUTHAMPTON COUNTY—Greeting:

WE COMMAND YOU TO SUMMON Fulgence de Bordenave and Martha A. de Bordenave, his wife

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 February next, to answer a Bill in Chancery exhibited against them in our said Court by Ernest A. de Bordenave and Lucy S. de Bordenave, two infants, by J. D. Pretlow their next friend, and Martha A. Lankford, a married woman, by Menalcus Lankford, her next friend.

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

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this 20 day of January, 1893, in the 117th year of the Commonwealth.

Teste: B. F. McLemore C. C.

This Deed of Trust made this 20th day of September 1897., by & between Mrs. Mattie de Bordenave, acting for herself and by virtue of a decree of the Circuit Court of Southampton County entered in the Chancery cause of de Bordenave for &c. vs. de Bordenave & wife dated June 3rd. 1893. and Earnest A. de Bordenave in his own right, parties of the first part and J. B. Prince Trustee of the second part. Witnesseth: That for and in consideration of the sum of One dollar: they the said parties of the first part do hereby grant bargain sell & convey unto the Trustee with general warranty, the following real property to wit: All of that certain tract of land situated about four Miles North of Franklin, Known as "Green Level"; containing 677 acres more or less & bounded by the lands of Stone & Fowler, Joel Cutchin, Dick Bradshaw & others - [illegible]

In trust to secure the payment of One bond for One Hundred Dollars of even date with this deed due on demand executed by Mattie de Bordenave, Earnest A de Bordenave & T. de Bordenave & payable to James. L. McLemore

or order with interest from date.
Witness the following Signatures and Seal:

Mattie de Bordenave (Seal)
Ernest A. de Bordenave (Seal)

State of Virginia
County of Southampton to-wit:

I C. C. Vaughan Jr., a Notary Public for the County of Southampton & State of Virginia do certify that Mattie de Bordenave whose name is signed to the writing above bearing date September 27th 1897 has acknowledged the same before me in my County aforesaid.

Given under my hand this 6th day of October 1897.

Notary Public

deBordenave by. &c
vs }
deBordenave and Wife.

It appearing that no order has been entered in this cause for five years save orders for continuance it is hereby ordered that the same be removed from the docket with leave to any party in interest to have the same re-instated within one year from this date.

de Bordenave &c

vs }

de Bordenave & wife

Entered this
Oct. 8th 1901
Robert R. Prentis

Entered

35

40

D. Bordman by &c.

vs } Additional Clerk's fees

D. Bordman & wife

1901 8th Oct. 11 continuances on the docket $2.75, 1 Decree 36c 3.11

Tax costs 5% on [illegible] @ 10cts. 55 = 55

Total $3.66

Teste: L. A. Gay C.C.

D. Bordman & Co.

vs. } Additional Clks. Fees

D. E. Bordman & Wife

de Bordenave

v.

de Bordenave

1/20/04

Divorce papers

J L M

De Bordenave by &c

Vs } Statement of costs

De Bordenave & wife

De Bordenave by &c. et als.
Vs. } Statement of Costs.
De Bordenave & wife

|  |  |
|---|---|
| 1 Summ. 25 - 2 Copy 26 - rect. 18 - Atty. 10 = | .79 |
| Dock. 18 - Rule 50 - Enter. return 35 - fil. bill 15 = | 1.18 |
| Do. Ex. 15 - rule 50 - copy exhibits 75 - 3 Decrees 2.16 = | 3.56 |
| fil. Comr's report 25 - Tax Costs 40 - 4 Continuances 1.00 | 1.65 |
| fil. away papers 25 | .25 |
| Clerk Paid - B. F. McLemore | $7.43 |
| Sheriff | 1.00 |
| Lawyer, | 16.50 |
| J. L. Parker Comr's fee This has been paid | 5.00 |
|  | $29.93 |

L. A. Gay .65
McLemore 6.78

Rec'd of Genl. W. B. Shands. atty. seven & 43/100 dollars, Clerk's Costs in above suit. Dec 3. 1895.

B. F. McLemore C.C.
L. A. Gay C.C.

7.43
.65

Paid attys fee $16.50 cts
Wm B Shands & Son

$5.00 Franklin. Va., Sept. 26th 1896

Received of W. B. Shands Law, Five Dollars Commissioners fee in Chancery suit of de Bordenave, et als. vs. de Bordenave, et als.

J. C. Parker

Com'r in Chancery,

Debordeman by wac

v. Z. Deere

Debordeman

To be entered
O.M.S.
May 7th 1893

Entered.

Debordinave et als
vs } Decree
Debordinave & wife

This day this cause came on again to be heard on the papers formerly read and was argued by counsel On consideration whereof and by consent of all parties entered in open court is ordered that this case be made a vacation cause

Copy William Lankfords will
and file it with the bill Exhibit A

Debordman & wife

ads B

Debordman by &c als

Answer of

Martha. A. Debordman

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1893. 2 Feb. Rule filed

The separate answer of Martha A. Debordenave to a bill in chancery in the circuit court of Southampton filed by Ernest Debordenave & al vs her & others

This defendant for answer to the said bill or as much thereof as she is advised it is material for her answer, answering says that the allegations of the plaintiffs bill are true That this farm of which the plaintiffs speak is her whole estate almost, that she has but little else, and is wholly unable to repair the house or put the plantation in order, she expects to move to this farm as it is her only home and she ask the court to permit her to raise money either by a Mortgage of trust on this very land to applied to rebuilding and repairing the dwelling and out houses and putting her farm in a suitable condition for cultivation and having fully answered prays hence to be dismissed with costs

Martha A. Debordenave
by Messrs Shands & Son p.d.

Deboordeman by ne als
vs } Decree
Deboordeman & wife

To be entered
C W D
May 1893

Entered

Debordenave by &c als
vs } Decree
Debordenave & wife

This day this cause came on to be heard on the plaintiffs bill taken for confessed as to the defendant Fulgence Debordenave the answer of Martha A Debordenave, general replication thereto exhibits filed and was argued by counsel On consideration whereof the court doth adjudge order and decree that one of the commissioners of this court enquire into and report to court whether in his opinion it would be to the interest of all parties interested in the tract of land devised by William Lankford to Martha A Debordenave for life with remainder to Ernest. A. Debordenave and others to borrow money and raise the same either by mortgage or deed of trust on the said land for the purpose of rebuilding the dwelling house and repairing the outhouses and put the said farm in proper condition for cultivation ity (the will requesting none to be required and the Court requiring none). Certificate is granted the said Story for obtaining a probat of the said will and Codicil in due form.

Teste: Oswin White C.C.

A Copy:

Teste: B. A. McLemore C.C.

William Lankfords
Will

Exhibit
'A'

11 00
7 50
3 50

page 430 3/9 67 to 73

Know all men by these presents, that I, William Lankford being of sound mind and memory, but knowing the uncertainty of human life, do make and ordain this my last Will and testament as follows:

Item 1st I desire that all my just debts if any shall be paid as soon after my decease as may be convenient—

Item 2d I loan to my mother Mariam Lankford, should she survive me, during her natural life, all of my Estate of every description both real & personal to be used by her in such manner as in her judgment may be most conducive to her ease and comfort.

Item 3rd. After the decease of my Mother, I will and bequeath to my niece Martha A Lankford one half of my said Estate both personal and real, or so much of it as may remain to her and her heirs forever

Item 4th I loan to my niece Martha A. De Bordenave the other half of my said Estate both real and personal, but not in any way subject to the control of her husband, or liable for his debts, but I loan the said property to the said Martha A DeBordenave during her life time

Item 5th Should my said niece Marth A De, Bordenave leave issue at her decease, then

I give and bequeath said property to her issue and their heirs forever, but should said Martha A. De Bordinave die without issue, then I give and bequeath said property, or so much as may remain thereof to Martha A. Lankford, if she be living, and if not to her children and their heirs forever.

Lastly I appoint my friend Elliot L. Story as Executor of this my last Will and testament without being required to give any security for [illegible] the same:

In witness whereof I have hereunto set my hand and affixed my seal this 12th day of February 1867

Witness
J. E. Lawrence
J. W. Duke

William Lankford (Seal)

I William Lankford, the above testator, do on this 27th day of November 1868 make this addition or codicil to my foregoing Will, that is to say: That I desire, that in any division of my real estate between my said niece Martha A. Lankford and the other devisee, I direct that the plantation and buildings thereon, occupied by me as my present homestead shall be assigne to said Martha A. Lankford, as part of her share, and that enough of my other land shall be assigned to her, in addition, to make up her, equal share in value—

In Witness whereof, I hereunto set my hand and seal this 27th day of November 1868.

Executed in our presents
William Lankford (Seal)

John R. Kilby
William D McClenny

At a Court held for the County of Southampton on the 18th day of July 1870. This last Will and Testament of William Lankford dec^d. and codicil thereto, were produced in Court and the will proved by the oath of J. E. Lawrence and J. W. Decke the subscribing witnesses thereto and the codicil proved by the oath of John R. Kilby and William D. McClenny the subscribing witnesses thereto and the said Will and Codicil ordered to be recorded — And on the motion of Elliot L. Story the Executor named in the said Will who made oath and entered into and acknowledged a bond in the penalty of Three Thousand dollars conditioned according to law, but without secur ity (the Will requesting none to be required and the Court requiring none). Certificate is granted the said Story for obtaining a probat of the said will and codicil in due form.

Teste: Oswin White C.C.

A Copy:

Teste: B. F. McLemore C.C.

William Lankford's
Will

Exhibit
"A"

1.00
.75

page 430 3d 67 to 73

de Bordenave. by etc.

vs. }

de Bordenave

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We hereby acknowledge service of the within notice this 20th day of May 1893.

Wm B Shand
atty for plaintiffs
and defts

May 20 – 1893

# Commissioner's Office,

Franklin
~~Jerusalem~~, Va., May 20th 1893

To Fulgence deBordenave, Martha A. deBordenave Martha A. Lankford, Ernest deBordenave & Livy F. deBordenave infants, by J. D. Pretlow their next friend

You are hereby notified that I have fixed upon the 23rd day of May next, if fair, if not, the next fair day thereafter (Sunday excepted), to take and settle, at my office, the following accounts, to wit:

Inquire into & report to Court whether, in my opinion, it will be to the interest of all parties interested in the tract of land devised by Wm Lankford to Martha A. deBordenave for life, with remainder to Ernest deBordenave & others to borrow money & raise the same either by mortgage or deed of Trust on said land for the purpose of rebuilding the dwellinghouse & repairing the outhouses and put the said farm in proper condition for cultivation

required to be taken by a decree of Southampton Circuit Court, rendered at the May term, 1893, 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. C. Parker
Commissioner.

To the Sheriff of Southampton County to execute.

de Bordenave by &c &als

vs } Decree

de Bordenave

Southampton Circuit Court: May term 1893

de Bordenave by &c als
vs. } Decree
de Bordenave & wife

This day this cause came on to be heard on the plaintiffs bill taken for confessed as to the defendant Fulgence de Bordenave, the answer of Martha A. de Bordenave, general replications thereto, exhibits filed and was argued by counsel. On consideration whereof the court doth adjudge, order and decree, that one of the commissioners of this Court inquire into and report to Court whether in his opinion, it would be to the interest of all parties interested in the tract of land devised by William Bankford to Martha A. de Bordenave for life, with remainder to Ernest de Bordenave and others to borrow money and raise the same either by mortgage or deed of trust on the said land for the purpose of rebuilding the dwelling house and repairing the out-houses and put the said farm in proper condition for cultivation.

A Copy:
Teste: B. F. McLemore C. C.

deBordenave, by.

vs. {

deBordenave

Report of Comrs.

1893. May 29. filed.

J. C. PARKER,

**ATTORNEY-AT-LAW,**

Main St., Franklin, Va.

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

The undersigned, one of the Commissioners of this court, respectfully reports that in accordance with a decree of this court entered at the May term 1893 thereof, in the chancery suit therein pending styled deBordenave, by, etc. VS. deBordenave, he, on the 20th day of May 1893 gave notice to the parties to said suit that he would on the 23rd, day of May 1893, take the account ordered to be taken by the said decree, which parties by their attorneys W.B.Shands & Son acknowledged service of said notice all of which will more fully appear by a copy of said decree and by the said notice herewith filed as a part of this report. Your commissioner reports that on the said 23rd of May he examined as witnesses with reference to the question refered to him by said decree John L.Lawrence, R.H.B.Cobb, F. deBordenave and from their testimony and from his own knowledge of the farm in question he is of the opinion that it will be to the interest of all persons interested to borrow money on the said farm and use the same in improving the condition of the buildings and ditching and putting the said farm in general good condition. The buildings are going to wreck for want of repair and the land is becomeing worthless for want of proper drainage. Your Commissioner is frank to say that he thinks the draining of the farm should be done by the life tenant and that the only thing that ought to be done by the remaindermen is to repair the buildings; but that if the life tenant will not drain the farm it should be done even if money has to be borrowed on the place to do it. Therefore your Commissioner is of the opinion that it is to all parties interest to borrow money to repair the buildings and drain and fence the farm and for no other purpose.

Respectfully submitted,

Com's Fee $5.

J. C. Parker, Com. in Chancery

Debordenave by &c & als
vs } Decree
Debordenave & wife

This day this cause came on again to be heard on the papers formerly read and the report of commissioner Parker made pursuant to a decree of this court entered at the May term 1893 and was argued by counsel on consideration whereof the court doth adjudge order and decree that the said report be confirmed and the court doth further adjudge, order, and decree that Martha A Debordenave in order to rebuild the dwelling house repair the fences and drain the farm of six hundred and seventy acres lying in Southampton wherein she has a life estate be authorized to raise the sum of Eleven hundred dollars by either Mortgage or deed of trust as to her may seem best on the tract of land lying on Blackwater river in Southampton containing six hundred and seventy acres and after paying the costs of this suit including a fee of fifty dollars to Wm B Shands & Son the plaintiffs attorneys the balance of the money borrowed apply first to rebuilding and repairing the dwelling house and secondly to repairing the fences and the proper drainage of the said farm and in order to effect the loan the said Martha A Debordenave is hereby fully empowered to execute either a deed of trust or Mortgage on the said farm as to her may seem most advantageous stipulating for reasonable time for the repayment of the said loan and the said Martha A Debordenave shall report her proceedings to court in order to a further decree

Debordenave by next fds
vs } Decree
Debordenave & wife

To be entered
CMM

Fd
June 8, 1893

Exand
Page 596

de Bordenave & als

copy of Decree

vs

de Bordenave & wife

Southampton Circuit Court: May term 1893

de Bordenave & als
vs. } Decree
deBordenave & wife

This day this cause came on again to be heard on the papers formerly read and was argued by Counsel. On consideration whereof and by consent of all parties entered in open Court, is ordered that this cause be made a vacation cause

A Copy

Teste: B. F. McLemore C. C