1905-10 Southampton County Chancery - Holland. Maggie (dols) vs Holland, T. W etal

real estate in question be partitioned, if possible, if not it be sold and shares be allotted according to law. Also that the dower interest be allotted to pltf or a trip.

Holland, Ruby
" , Mary

Holland, George D.

Maggie Holland vs.

Decree

J.W. & Geo. O. Holland

Filed July 22

Entered

Page 104

Virginia, In Vacation in the Circuit Court of Southampton County, July 22nd 1904 –

Maggie Holland and others

v.

J.W. and George D. Holland

which has by a former decree herein been submitted to the judge of this court for such decisions and decrees thereon in vacation as might be made in term.

This day this cause came on again to be heard upon the papers formerly read, upon the petition of Maggie Holland filed since the last term of this Court, asking that she be allowed to claim and set apart the $300 under the control of the Court, to be held as a Homestead for herself and her infant children, upon the report of J.B. Prince ~~Special~~ Commissioner filed September 16th 1903, to which report exceptions have been taken, and was argued by counsel.

On consideration whereof the Court doth adjudge order and decree that so much of said report of J.B. Prince Commissioner as ascertains the value of Edgar Hollands interest in the real estate in the bill and proceedings mentioned, fixing same at $300, and also reporting that J.W. & George D. Holland were willing to take the decedents interest at that price upon the execution of a deed for same, be confirmed, and Jas. L. McLemore is hereby appointed a special Commissioner to execute to said J.W. & George D. Holland a deed with special warranty for the 1/3 interest of said decedent upon the payment of the purchase price of $300 to Mrs Maggie Holland widow, or to her

attorney, and it further appearing to the Court, from a Copy filed in the papers of this Cause, marked exhibit "M H" that the said Maggie Holland, widow, has by a writing duly recorded, set apart and claimed the said $300, as a Homestead by virtue of sections 3631 and 3640 Code of 1887, it is further ordered and decreed that said $300, less the legal costs taxable against same, be paid over to the said Maggie Holland to be held by her as a Homestead in accordance with the statute laws of Virginia.

And the Court doth further order and decree that the legal costs of this suit be borne equally by the parties, to reimburse the said Maggie Holland paying 1/3 thereof, and the defendants the remaining two thirds.

And said Special Commissioner will report to Court.

Teste Clerk of the Court
Court of Southampton County

Robert R. Ellis

"M4."

Maggie Holland

Homestead Deed.

Admitted to Record this 23 *day of*

July 1904, ~~189~~

Recorded D. B. 49, *Page* 305

Examined and verified.

Geo Dudley

702 *Clerk.*

Exam'd

Tax, - - - - - $0.50

Fee, - - - - - $1.25

$1.75

#

Printed and for sale at Herald Office, Suffolk, Va.

Ch'd J. L. McLemore

Know All Men by These Presents, That I, Maggie Holland, widow of Edgar Holland hereby claim my Homestead Exemption in the following property, for the benefit of myself and my infant children Ruby Holland and May Holland. to wit:

[HERE INSERT PROPERTY AND VALUE OF EACH ARTICLE]

$300. in money, the same arising from the sale of the interest of my late husband in a certain tract of land near Nebsans Va. containing as a whole 128 acres more or less, known as the Turner tract, same being sold in partition proceedings in the Circuit Court of Southampton County, in the Chancery cause of Maggie Holland &c. v. J.W. & Geo. D. Holland, said funds being personal property set apart and claimed by me as a Homestead for the benefit of myself and my infant children aforesaid and is to be held

~~to be held~~ in accordance with the provisions of Chapter 178, Code of Virginia, 1887.

Witness the following signature and seal, this 19th day of July 1904 ~~189~~

Witness
E. B. Beaton

Maggie X Holland (her mark) SEAL

STATE OF VIRGINIA—COUNTY OF Southampton To wit:

I, E. B. Beaton, a Notary Public

for the County aforesaid, in the State of Virginia, do certify that Maggie Holland, whose name is signed to the foregoing writing, bearing date on the 19th day of July 1904, ~~189~~, has acknowledged the same before me in my county aforesaid.

Given under my hand this 20 day of July 1904, ~~189~~

My Commission expires 17 day of March 1906

E. B. Beaton
Notary Public

IN THE CLERK'S OFFICE of the ~~County~~ Circuit Court for the county of Southampton the 23 day of July 1904, ~~189~~, this Deed of Homestead was presented, and, with the certificate annexed, admitted to record.

Teste:

J. F. McLemore, Clerk.
By H. B. McLemore, D. C.

Maggie Holland et als

vs. { Commissioner's Report

J. W. & Leo. W. Holland

1903 - Sept. 16th, filed -

L. A. Gay C.C.

J. B. PRINCE J. B. PRINCE, JR.

J. B. PRINCE & SON,
Attorneys & Counsellors at Law,
Courtland, Va.

Maggie Holland and others,

vs. Commissioners Notice,

J.W. & Geo.D.Holland.

WE ACKNOWLEDGE DUE AND LEGAL SERVICE OF THE WITHIN NOTICE.

Maggie Holland
by J.L. McEmore her atty.

W.J. Bell, p.d.

W.J. Bell for defts.

J.B.Prince,
Commissioner.

OFFICE OF JOS. B. PRINCE, JR.,

Commissioner in Chancery for the Circuit Court of Southampton County, Virginia.

Courtland, Va., June 29th, 1903.

To

Maggie Holland, widow of Edgar Holland, and Ruby Holland and Mary Holland, infants who sue by Maggie Holland, their next friend.

PLAINTIFFS.

VS.

J.W.Holland and George D.Holland

DEFENDANTS.

To be read after Item Eighth below.

* ing to the other parties in interest such sums as their interests * therein may entitle them to. *

You are hereby notified that I have fixed upon the 28th day of July, 1903, if fair, if not the next fair day thereafter (Sunday excepted), to take and settle, at my office, the following accounts, to-wit:

First:-What was the interest of Edgar Holland in the tract of land in the bill and proceedings mentioned, and what is the interest of his wife, and her two infant children, Ruby Holland and Mary Holland, therein,

Second:-An account of the rents and profits which have been received from the said land since the death of the said Edgar Holland and who has received them:

Third:-The rights of your oratrix, Maggie Holland, to dower in the said land:

Fourth:-The lien debts against said real estate for delinquent taxes or otherwise:

Fifth:- Any other matter specially stated deemed pertinent by the commissioner or required to be so stated by any party in interest:

Sixth:- The annual and fee simple value of said real estate, and of the interest of Edgar Holland, decd., therein,

Seventh:-What amounts, if any, have been paid by the defendants or either of them for on account of Edgar Holland, properly chargeable against his estate:

Eighth:-Whether the real estate in the bill and proceedings mentioned can be partitioned in kind in any of the modes prescribed by the statute, and if not whether any party will take the entire subject matter, pay-

required to be taken by a decree of Southampton Circuit Court, rendered at the October, 7, 1903, 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 B Prince, Commissioner.

To the Sheriff of Southampton County to execute.

Maggie Holland, widow of Edgar Holland, deceased, and Ruby Holland and May Holland, infants, who sue by the said Maggie Holland, their next friend,

vs.

J.W. and George D. Holland.

This day this cause which has regularly matured at rules came on to be heard upon the bill and exhibits filed, the answer of the defendants J.W. and George D. Holland, filed this day, with general replication thereto, and was argued by counsel.

On consideration whereof the court doth adjudge, order and decree that the parties in this cause be referred to one of the commissioners of this court, who is directed to inquire into and report to court (1st) what was the interest of Edgar Holland in the tract of land in the bill and proceedings mentioned, and what is the interest of his wife, Maggie Holland, and her two infant children, Ruby Holland and May Holland, therein, (2nd) an account of the rents and profits which have been received from the said land since the death of the said Edgar Holland, and who has received the same; (3rd) the rights of your oratrix Maggie Holland to dower in the said land; (4th) the lien debts against said real estate for delinquent taxes or otherwise; (5th) any other matter specially stated deemed pertinent by the commissioner, or required to be stated by any party in interest. 6th, the annual and fee simple value of the said real estate and the interest of Edgar Holland, deceased, therein; (7th) what amounts, if any, have been paid by defendants or either of them for or on account of Edgar Holland, properly chargeable against his estate, (8th) whether the real estate in the proceedings mentioned can be partitioned in kind in any of the modes prescribed by the statutes and if not, whether any party will take the entire subject matter, paying to the other parties in interest such sums as their interest therein may entitle them to.

By consent of parties given in open court it is ordered that this cause may be submitted to the judge of this court in vacation, for such decisions and decrees therein, as might be made

Commissioners Office.

Courtland, Va. September 16th,1903.

To the Circuit Court of Southampton County, Va.

Pursuant to a decree of the Circuit Court of Southampton county entered on the 7th day of October,1903, in the chancery suit therein depending styled Maggie Holland and others vs. J.W. and George D.Holland, the undersigned, a commissioner of the above styled court, to whom was referred for settlement the accounts of the said decree, begs to report:that on the 29th day of June,1903, he issued notices against the several parties to the said suit, requiring them to attend the taking of the accounts of the said decree on ~~September~~ July 28th,1903, at his office in the town of Courtland, which notices were duly acknowledged by the parties, or their duly authorized attorneys.

To assist ~~the~~ in making a report of the accounts of the said decree, the depositions of J.L.Barham, J.W.Holland, Emmett L.Holland and H.D.Edwards were taken, which depositions are filed herewith as a part of this report, and the said undersigned commissioner begs to report:-

First:- Edgar Holland,deceased, was entitled to an undivided one fourth interest in the ~~land and proceedings mentioned~~ land in the bill and proceedings mentioned and Maggie Holland, widow of Edgar Holland is entitled to dower in the said undivided one ~~fo~~ fourth interest, and Ruby Holland and May Holland, children of Edgar Holland are entitled to the undivided one fourth interest in fee, subject to the dower interest of Maggie Holland, above mentioned.

Second:- J.W.Holland has had possession of the said one fourth interest one year since the death of the said Edgar Holland, for which he should account to Maggie Holland, widow aforesaid, May and Ruby Holland for the sum of $20.00, which in the opinion of the commissioner is a fair rental value for the one fourth interest.

Third:- Maggie Holland is entitled to dower in the undivided one fourt interest of Edgar Holland, deceased.

Fourth:-There is a lien debt of $81.92 (Eighty one and 92/100 Dollars.) against the said Edgar Holland, which is one fourth of a bond which he with his three brothers gave, secured by a deed of trust on the entire property in the bill and proceedings mentioned. This bond, it appears from the testimony before the commissioner was given on or about Apl. 9th, 1887, and was for $165.00, and was paid off by J.W. and Geo. D. Holland.

Fifth:- *

Sixth:-The fee simple value of the said land is about $1200.00 and of the one fourth interest $300.00, and the annual value of the said land is about $80.00, or $20.00 for a one fourth interest.

Seventh:-J.W. and George D.Holland have paid on account of Edgar Holland $237.42, which should be a charge upon his interest in the land in the bill and proceedings mentioned.

Eighth:-The real estate in the bill and proceedings mentioned can not be conveniently divided in kind among the parties in interest, but the commissioner is informed J.W. and George D.Holland are willing to take the interest of Edgar Holland, decd., at the sum of $300.00, which sum the commissioner considers a fair price for same.

Respectfully submitted,

Joseph B Prince

Commissioner's fee $7.50.

Comm. & Cl.

The depesition of J.L.Barham and others, taken before me Jos. B. Prince, a commissioner in chancery of the Circuit Court for the county of Southampton to assist said commissioner in making a report in the chancery suit depending in the said court,styled Maggie Holland et als vs. J.W. and Geo.D.Holland, the said depositions being taken at the time of taking the accounts of a decree entered on the 7th of October,1903, pursuant to notice filed with this report, said decree being referred to the said commissioner for settlement.

Q. Please state you name, age, residence, occupation, and do you know the parties to this suit ?

Ans. J.L.Barham, 57, Southampton county, Merchant, I know the parties

Q. It is alleged in respondents answer filed in this suit, that on, or about the 9th day of April,'87, and the respondents together with Edgar Holland and Frank W.Holland, their brothers, executed a joint bond to James D.Darden for $165.00, and on the same day jointly executed a deed of trust on the tract of land in the bill and proceedings mentioned to secure said bond, and that sometime thereafter the respondents, J.W. and G.D.Holland paid off themselves in full the said bond; please state what you know, if anything about this matter ?

Ans. MR, J.W. and G.D.Holland came to me to borrow a sum of money which they claimed was to pay off a deed of trust due to James D.Darden, decd., I let them have the money with the understanding that they were to go to Mr.Howard, who was the executor of James D.Darden, decd., pay off said bond and bring the same to me, so that I might know that the title was clear. They did bring said bond to me, marked paid, upon which I took a deed of trust to secure said money paid to Howard as executor. After seeing the bonds marked paid, my impression is that I delivered them back to them.

Q. Please state what you think is a fair price for the interest of Edgar Holland in the land in the bill and proceddings mentioned ?

Ans. I think $250 or $300 a very fair value for said one fourth interes and an annual value of $18 or $19.

And further this deponent saith not. J.L.Barham

Witness G.D.Holland after being duly sworn, deposes as follows:-

Please state your name, age, residence, occupation, and do you know the parties to this suit ?

Ans. J.W.Holland, 40, Southampton county, farmer, I am one of the defendants and am a brother of Edgar Holland, decd.

Q. Please state whether the bond for $165.00 jointly executed by yourself and three brothers, G.D.Holland, Edgar Holland and Frank W.Holland, and which was secured by a deed of trust on the tract of land in the bill and proceedings mentioned, same being due and payable to Jas.D.Darden, has ever been paid off or not, and if it has been paid please state who paid off the same, and waht has become of the said bond ?

Ans. The bond has been paid off. G.D.Holland, my brother and myself furnished the money and paid it off and took in the bond. We paid the money to R.Howard, executor of Jas.D.Darden, who delivered the bond to us. We borrowed the money from Mr. J.L.Barham to pay off the bond and carried it to him after we had paid same off. We gave Mr. Barham a deed of trust on our land to secure him. The bond which we paid off, when our house was destroyed by fire, was burned.

Q. Since the death of Edgar Holland state how long you have had possession of the said tract of land, rpior to this year ?

Ans. I have had possession of it only one year, and cultivated it that year. My mother, who had a life estate in the tract of land, lived one year longer than Edgar Holland and she had possession of it up to her death.

Q. Are you and your brother, G.D.Holland willing to take the entire tract of land pay such sum as you may owe on your brother's interest at a valuation of $300 for his interest ?

Ans. We are.

Q. Please state who paid the expenses incurred by Edgar Holland during his last illness, statements of which are filed as Exhibits A and B along with respondents answer, filed in this suit?

Ans. My brother, G.D.Holland and myself.

Q. To whom did you pay the money ?

Ans. I paid the money to our brother E.N.Holland, who lived in Portsmouth, and at whose house Edgar Holland was from the time he went to Norfolk until he died. He tried to get into a hospital, but on account if his disease, consumption, they would not receive him at the hospital, and he then went to our brother as above mentioned.

Q. Have any of these said sums of money, or any part thereof, advanced, or paid by you and your brother G.D.Holland, for and on account of your brother Edgar Holland ever been repaid to you or your brother G.D.Holland.

Ans. No.

And further this deponent saith not.

Signature waived

Witness Emmett N.Holland after being duly sworn deposes as follows:

Q. State your name, age, residence, occupation, and do you know the parties to this suit ?

Ans. Emmett N.Holland, 30 years old, Portsmouth, Va. Clerk in Navy Yard,I know the parties to the suit.

Q. Please state where Edgar Holland stayed, during his last illness? and up to the time of his death? and about how long he was sick prior to his death ?

Ans. He stayed at my house in Portsmouth. We tried to get him in at the hospital, but they would not receive him on account of the bature of his disease, consumption. I think he was there about ten weeks.

Q: Who paid the expenses incurred by him by reason of his sickness such as medicines, nursing and attendance, and finally his funeral expenses ?

Ans. I paid the entire expense, and was reimbursed by my brothers after his death.

Q. Had there been any previous understanding among you, prior to Edgar's death as to who should bear these expenses ?

Ans. There had been no previous understanding, but after his death they, that is, my brothers ~~paid~~ J.W. and G.D.Holland paid me what I had already paid out for medicines &c. included in Exhibit A., and the funeral expenses, which I became responsible for, but had not paid, ~~they~~ and which are represented by Exhibit B were paid with money sent me by my brothers J.W and G.D.Holland. I sent them the statement of his funeral expenses and they sent me the money to pay the said bill.

And further this deponent saith not.

Signature waived.

in term.

A copy:- teste:

L. A. Gay C.C.M

COURTLAND, VA., 190

The deposition of H.D.Edwards, taken before me J.B.Prince,jr., a commissioner in chancery of the Circuit Court of Southampton County to assist said Commissioner in making a report in the ~~cancery~~ chancery suit of Maggie Holland ~~and~~ vs. Holland et als, same being taken pursuant to notice of the time and ~~the~~ place of the time of taking of an account before the said commissioner in the said suit.

The witness after being buly sworn deposes as follows:-

Q.1. Are you acquainted with the land in the bill and proceedings mentioned
Yes.
Q.2. What in your opinion is the fee simple and annual value of the said land ?
Ans. $1200 pr $1300 annual value, and rental value $80, about.

Q.3. What do you think a fair value of the interest of Mrs. Holland and her children in this land ?
Ans. About $300.

And further this deponent saith not.

Signature waived.

1905

Maggie Holland et als.

v. --DECREE--

J. W. & George D. Holland

Enter 17th day of July

1905.

Robt R. Prewitt

Entered

C. O. B. fo. 172

Maggie Holland et als.

v.

J. W. & George D. Holland.

This day this cause came on again to be heard upon the papers formerly read, and upon the report of special commissioner, James L. McLemore filed 17th day of July, 1905, reporting execution of deed to purchasers, J. W. Holland and George D. Holland, in accordance with decree of July 22nd., 1904, and disbursement of the entire proceeds, by the payment of same to the widow of Edgar Holland, deceased, held by her as dower under the statute laws of the State of Virginia, for the benefit of herself and her infant children, which report is supported by vouchers, and to which no exceptions have been taken, and was argued by counsel.

On consideration whereof the court doth adjudge, order and decree that the said report be and the same is hereby confirmed, and the ~~papers of the~~ cause are herby ordered to be removed from the docket.

Maggie Hallock

Statement -
Maggie Holland

Amo. of Land value	300-
Int. for 11 mos. from Sept 8. 1903 -	16.50
	$316.50
1/3 cost. =	10.24

Courtland Va

Aug 7th 1904

Mr B. H. McLemore b. b.

Dear Sir

Will you please make the picture of the gray eyed girl on the 9th page below. and also your sweet and gastly smiles when in her presence.

Yours true friend Viola Gray

Maggie Holland et als.

v. --REPORT--

J. W. & George D. Holland.

1905 July 17th filed.

R.R.1

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT COURT OF SOUTHAMPTON COUNTY:

Maggie Holland et als.

v.

J. W. & George D. Holland

The undersigned Special Commissioner, appointed by decre of July 22nd., 1904, in this cause to execute a deed to J. W. and George D. Holland, and collect from them for the one-third interest of Edgar Holland, deceased, the sum of three hundred ($300.00) dollars, begs to report that he executed the said deed, collected the purchase money with interest, $16.50 and that he paid the entire amount over to the widow of Edgar Holland, deceased, namely, Mrs. Maggie Holland, taking her receipt therefor in accordance with the aforesaid decree, the said sum to be held by her as a homstead for the benefit of herself and her infant children, the voucher covering said settlement being hereto attached.

Respectfully submitted,

Jas. W. Lomax
Special Commissioner

I also collected from M. Lomax & Corbitt attys. $2x.20 rent of farm before same was sold, same being Maggie Holland's share, which has been paid to her in accordance with receipt attached —

June 9, 1905.

Jas. W. Lomax Spec. Com.

Received of McLemore & Corbitt, Attorneys, the sum of three hundred and sixteen and 50/100 ($316.50) dollars, same being in full of all claims and demands which they have received in the chancery suit of Maggie Holland et als. v. J. W. & Geo. D. Holland, arising out of the interest of my late husband, Edgar Holland, in the real estate owned jointly by him and the defendants in the said cause, which amount I am to hold as a homestead to be used and employed for the benefit of myself and my infant children.

Maggie Holland

October 4th., 1904.

Received of McLemore & Corbitt, Attorneys, check for fourteen and 38/100 ($14.38) dollars, same being amount in their hands as per statement rendered, which amount I am receiving to be held as a homestead for the benefit of myself and children, in accordance with previous decree entered in the chancery cause of Maggie Holland v. George D. and J. W. Holland.

her
Maggie × Holland
mark

June 9th.,1905.

Witness
E. P. Bryant

Form No. 300½.

Holland's Infants by &c.

vs. } SUBPŒNA IN CHANCERY.

Holland et als.

Mc Dermott Corbett p.q.

To 2nd September Rules.

Circuit Court.

Executed by delivering a copy of this notice to each of the Defendants
Sept 13-02 J. F. Brobst Dep.
for J. M. Williams
D. Fff

(2)

Everett Waddey Co.,
Stationers and Printers,
Richmond, Va.
Form No. 300½.

The Commonwealth of Virginia,

To the Sheriff of the County of Southampton Greeting:

WE COMMAND YOU, That you summon J. W. Holland and George D. Holland

to appear at the Clerk's Office of the Circuit Court of the County of Southampton at the rules to be held for the said court on the 3rd Monday in September 190 2, to answer a bill in chancery exhibited against them in our said court by Maggie Holland widow of Edgar Holland and Ruby Holland and May Holland infants who sue by Maggie Holland, their next friend.

And have then there this writ. Witness Z. A. Gay, Clerk of our said court, at the courthouse, the 9th day of September 190 2, and in the 127th year of the Commonwealth.

Teste: Z. A. Gay C. C.

subject matter, paying to the other parties in interest such sums as their interest therein may entitle them to.

By consent of parties given in open Court it is ordered that this cause may be submitted to the Judge of this Court in vacation, per such decision and decree therein, as might be made in term.

Maggie Holland et als.
v.
J.W. & Geo.D.Holland.

DECREE.

Enter 11th day of Oct 1902.

Robt R Pruitt
Chancellor.

Contd. Page No. 460

Dr cause to this decree — Jas. Williams Atty for pltffs. p.d. 1 cy.

Maggie Holland, widow of Edgar Holland, deceased, and Ruby Holland and May Holland, infants, who sue by the said Maggie Holland, their next friend,

v.

J. W. Holland and George D. Holland

This day this cause which has regularly matured at rules came on to be heard upon the bill and exhibits filed, ~~bill taken for confessed as to the defendants~~, the answers of the defendants J.W. & G.D. Holland, with general replication thereto, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that the papers in this cause be referred to one of the commissioners of this court, who is directed to inquire into and report to court (1st) what was the interest of Edgar Holland in the tract of land in the bill and proceedings mentioned, and what is the interest of his wife, Maggie Holland, and her two infant children, Ruby Holland and May Holland, therein; (2nd) an account of the rents and profits which have been received from the said land since the death of the said Edgar Holland, and who has received the same; (3rd) the rights ~~of your oratrix~~, Maggie Holland, to dower in the said land; (4th) the lien debts against said real estate for delinquent taxes, or otherwise; ~~and~~ (5th) any other matter specially stated deemed pertinent by the commissioner, or required to be stated by any party in interest.

6th. The Annual rent value of said real estate. and of the interest Edgar Holland died seized therein.

7th. What amounts, if any, have been paid by defendants or either of them for or on account of Edgar Holland property chargeable against his estate.

8th. Whether the real estate in the proceedings mentioned can be partitioned in kind in any of the modes prescribed by the statute, & if not, whether any party will take the entire

Virginia. In the Circuit Court of Southampton County, October Term 1902.

Maggie Holland, Widow of Edgar Holland, deceased, and Ruby Holland and May Holland, infants, who sue by the said Maggie Holland, their next friend,

v.

J. W. Holland and George D. Holland.

This day this Cause which has regularly matured at rules came on to be heard upon the bill and exhibits filed, the answer of the defendants J. W. & G. D. Holland filed this day with general replication thereto, and was argued by Counsel.

On Consideration whereof, the Court doth adjudge, order and decree that the papers in this Cause be referred to one of the Commissioners of this Court, who is directed to inquire into and report to Court (1st.) what was the interest of Edgar Holland in the tract of land in the bill and proceedings mentioned, and what is the interest of his wife, Maggie Holland, and her two infant children, Ruby Holland and Mary Holland, therein; (2nd) an account of the rents and profits which have been received from the said land since the death of the said Edgar Holland, and who has received the same; (3rd) the rights of your oratrix, Maggie Holland, to dower in the said land; (4th) the lien debts against said real estate for delinquent taxes, or otherwise; (5th) any other matter specially stated deemed pertinent by the Commissioner, or required to be stated by any party in interest, 6th the annual and fee simple value of said real estate,

and of the interest of Edgar Holland dec'd therein.
7th. What amounts, if any, have been paid by defendants or either of them for or on account of Edgar Hollands property chargable against his Estate.
8th Whether the real estate in the proceedings mentioned can be partitioned in kind in any of the modes prescribed by the Statute; & if not. whether any party will take the entire Subject matter, paying to the other parties in interest such sums as their interest therein may entitle them to.

By consent of parties given in open Court it is ordered that this cause may be submitted to the Judge of this Court in Vacation, for such decisions and decrees therein, as might be made in Term.

A copy.

Teste:

L. A. Gay C.C.

Imagg in Holland exhs.
Dg { Copy of Decree
L.M.& Geo. D. Holland

Holland, Maggie Bell

vs. } In Chancery.

Holland J.W. & G.D.

Answer of J.W. and G.D. Holland

W. J. SEBRELL,
ATTORNEY-AT-LAW,
CLINTWOOD, VA.

Everett, Waddey Co., Printers and Binders, Richmond, Va.

The answer of J.W. Holland and G.D. Holland to a bill of complaint exhibited against them in the Circuit Court of Southampton County by Maggie Holland, widow of Edgar Holland, deceased, and Ruby Holland and May Holland, infant children of said Edgar Holland, who sue by said Maggie Holland, their next friend.

The respondents reserving to themselves the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as they are advised that it is material that they should answer, answer and say that it is true, as alleged in the bill of the complainants that the said Edgar Holland, in his life-time, and your respondents were jointly seized of the tract of land in the bill mentioned and described, your respondents owning an undivided three-fourths' interest in said tract of land, and the said Edgar Holland owning an undivided one-fourth interest in the same. But your respondents would here state that on or about the 9th day of April 1887, the said Edgar Holland, together with your respondents and their brother, Frank W. Holland, executed a joint bond

to Jas. D. Darden for $165.00, and on the same day jointly executed a deed of trust conveying all their interests in said tract of land, in trust, to secure the payment of the said bond, the said deed of trust being duly recorded in the Clerk's Office of Southampton County Court in D. T. Book No. 1, on page 257. That sometime thereafter, to-wit, on or about the 17th June 1901, your respondents themselves paid off in full the said bond, with interest, and had the said deed of trust released; and your respondents are advised that they are entitled to have and receive by way of contribution from the estate of the said Edgar Holland his proportionate part of the said bond thus paid off by your respondents as aforesaid. That, besides this, during the last illness of the said Edgar Holland, which terminated in his death on or about the 25th of November 1899, your respondents paid for him on account of medicines, nursing, attention &c., and funeral expenses the sum of $155.50, as will more particularly appear from statements herewith filed,

marked, Exhibits A and B, which are prayed to be read as parts of this answer. That the said sums of money, so advanced and paid by your respondents for and on account of the said Edgar Holland have never been repaid to them but are still wholly due to them, and your respondents are advised that they are entitled to collect and receive the said amounts, with interest thereon, from the estate of the said Edgar Holland, and as said Edgar Holland left no other estate save his said interest in said tract of land, as stated in complainants' bill, your respondents claim and contend that the said sums, with interest thereon, due to them as aforesaid, should be paid to them out of his said interest in said tract of land, or out of the proceeds thereof, and they pray that the same may be accordingly done.

Your respondents would state that, owning as they do, the greater portion of the said tract of land, they do not wish the same to be sold, nor do they see any reason or necessity for the same, as they are willing to take the entire property at a fair and reasonable price, and pay to the plaintiffs such sums as their interest therein

may entitle them to receive, provided that, in so doing, they be allowed as a credit the sums due to them on account of the amounts paid by them for, and on account of the said Edgar Holland, as hereinbefore stated. — As to the matter of the rents & profits of said tract of land mentioned in complainants' Bill, your respondents deny that they have had the possession of said land ever since the said Edgar Hollands' death; but, on the contrary, your respondents say that Mary L. Holland, the mother of said Edgar Holland and of your respondents, who had a life estate in said lands for & during her natural life, lived nearly a year after the death of said Edgar Holland and had possession of ~~said lands~~ the first year after his death, and your respondents are not cultivating said tract of land during this year (1902), but consented, ~~so~~ far as they were concerned, for another party to take charge of it this year, and put some little crops on it, on condition that he would keep up the fences & keep the place in order, which your respondents considered to be for the best interest of all concerned. And so your respondents say that

they have cultivated the place and had the rents and profits thereof only one year since the said Edgar Holland's death, to-wit, the year 1901, and they are willing to pay a fair and reasonable sum, as rental for said Edgar Holland's interest in said lands for said year 1901.

The respondents deny all fraud, unlawful combination and confederacy, and having answered complainants' bill, pray to be hence dismissed with their reasonable costs in this behalf expended, &c they will ever pray &c.

W. J. Cabell, p.d.

his
D. W. X Holland
mark

his
G. A. X Holland
mark

Witness:

J. E. Westbrook

Exhibit A.

Portsmouth, Va.

September 20th, 1902.

Statement of expenses incurred by E. N. Holland in the case of E. B. Holland, from September 8th, 1899 to November 23rd, 1899, say ten weeks.

Board and laundry @ $ 4.00 per week	$ 40.00
1/2 Gal. Whiskey per week at $ 4.00 per gallon (5 gals)	20.00
1 Bottle Codliver Oil per week @ 75cts per week	7.50
Nursing and attendance @ $ 3.25 per week	32.50
15 Trips to Norfolk, consultation with Doctors,	3.00
Undertakers expenses as per attached bill	52.50
Total	$ 155.50

I hereby certify that the above bill of Expenses, incurred on account of E. B. Holland deceased, in his last illness, amounting to $155.50, was paid in full by J. W. Holland and G. D. Holland. Given under my hand this 27 day of Sept. 1902.

E. N. Holland

Sworn to by E. N. Holland before me, this 27th day of Sept. 1902.

N. P.

Commn expir
Apl 15/03

Telegraph and Telephone Orders Will Receive Prompt Attention. Office Open Day and Night.

Statement of Account.

Bell 'Phone, Office, 2161-2.
Bell 'Phone, House, 2161-3.

Portsmouth, Va., Sept 18th 1902

Mr E. N. Holland
For Brother

To W. B. Johnson, Dr.

(J. E. SNELLINGS, Mgr.)

Funeral Director and Embalmer,

Terms:

608 Green Street.

1899					
Nov	24	Coffin & Box	32	50	
		Suite	12	00	
		Embalming Fluid	5	00	
		Ambulance	2	50	
		Burial Permit		50	
				$	52 50

Exhibit B.

Copy

20.48

1904

Sp on 25 - 2 Cap 25 -	50
18 - 10 - 18 - 50	96
35 - 15 - 15 - 50 - 72 - 15	2.02
Gay.	3.48
Deeds 72 Cap Comb 40	1.12
Filing away papers. 25	25
" Com report 15	15
Deeds Conf copies & envelope	
Canvas pan & rack - 72	72
	2.24
paid — B7M	3.72
Shfx	1.00
Com	7.50
Lodge	16.50
	30.72
	20.48

Boykins Va
Sept. 28th 1904

Mr J. L. McLemore.

Dear sir I write to tell yu I recived the Check for one hundred dollars and was very glad to get it I would have written before now but yu said in your letter yu hoped to be able to bring the case to a close in thirty days. and I would like to know is it any more for me and what do yu charge me. please let me know and oblige yuu very Respt.

Maggie Holland

Brief of argument in chancery cause of Maggie Holland and others against J. W. and Geo. D. Holland, filed by James L. McLemore, counsel for plaintiffs.

The questions upon which a decision by the court is desired, are-

First, whether or not the special commissioner, J. B. Prince, erred in allowing, as sufficiently proved, a debt against the decedent's estate of Eighty-one and 92/100 ($81.92) Dollars.

Second, if the defendants, J. W. and George D. Holland have a right to require the estate of the decedent to contribute to the payment of a joint debt of the three brothers originally held by James D. Darden, then after proving up said debt against the estate of Edgar Holland, does it retain its identity as a homestead waver debt, assuming the original bond to have waived the homestead, or does it arise out of an implied promise to re-imburse, and thereby become a simple obligation?

Third, in claiming the homestead on the part of the widow, for the benefit of herself and infant children, in the three hundred ($300.00) dollars recommended by the commissioner as a fair valuation for the deceased brother's interest, is the said three hundred ($300.00) dollars treated as personalty or real estate as respects the methods of setting it apart under the statute?

With reference to the first inquiry we respectfully submit that from the evidence in the case there is not sufficient in the testimony of J. L. Barham, the only witness authorized to speak on this subject (the brothers being clearly incompetent) to justify the commissioner in finding that the defendants paid off the bond due by the three brothers. Especially is this true when it was clearly and conveniently

in their power to establish the fact unequivocally by Mr. R. Howard, to whom they claim the money was paid.

As to the second proposition, we think the authorities sustain the view that a debt proved under the doctrine of contribution is a simple obligation, and has none of the attributes of subrogation; that same is in the nature of an implied obligation, not based upon contract but a creature of equity. Sustaining this view is the case of Armstrong v. Henderson, 99 Va., 238, in which the court, in quoting from 28 L.R.A., 528, wherein will be found a very full and comprehensive discussion of the subject, says:

"The right of action is not on the contract with Lea, Watkins & Co., but on the implied assumpsit or obligation which the law raises from the payment by one contractor of what his co-contractor should have paid, and therefore is governed by the terms which the law implies for the sake of justice between the parties."

In an earlier discussion of this subject by our court foundin 89 Va., 747, the old court avoided expressing an opinion as to the nature of a debt arising by reason of the doctrin under consideration, wherein it mentions both views; but it seems to us that the more recent decision above referred to, that the court takes the position contended for by us in unequivocal language, and it can hardly be doubted that the doctrine of Armstrong v. Henderson is the better doctrine in the United States.

Sustaining this view we quote from 9 Cyc. of Law & Procedure, 794:

"The right to contribution has its foundation in, and is controlled by principles of equity and natural justice, and does not arise from contract."

Sustaining the text are decisions from Ala., Cal., Ill., Md., Mass., Mo., N. H., N. Y., N. C., Ohio, Pa., S. C., Tex., Vt. and Va.

As to the third question raised, we take the position that the same is personal estate for the following reasons: The chancery cause was brought for partition of the property

among the heirs at law. Instead of a sale it has been agreed that the interest of the plaintiff was worth $500.00. The commissioner has so reported, and the court will be asked to confirm the report in that respect and approve of a sale to the defendants upon receipt of that amount of money. Assuming for the purpose of argument that the court will confirm this sale, we think the funds will then become personal property by authority of section 2564 of the Code of Virginia, which provides that where the dividend of a party in a partition suit does not exceed $500.00, the funds shall be paid to the guardian (where infants are interested) and held and controlled as other personal property belonging to the ward in his hands; under the influence of which statute, we feel justified in saying that this fund will be treated as personal property.

Respectfully submitted,

J. L. W. Moore,

Holland
v. } In Chancery.
Holland.

Brief of W. J. Isbell,
atty. for J. W. Holland
and G. D. Holland.

Note of argument of W. J. Sebrell, attorney for J. W. Holland and G. D. Holland, defendants in the chancery cause of Holland &c. v. Holland, depending in the Circuit court of Southampton county.

Since the filing of his brief in this case, counsel for plaintiffs has stated to counsel for the defendants, J. W. Holland and G. D. Holland, that he would now admit that the said defendants, J. W. Holland and G. D. Holland, paid off the bond due by the three brothers and that said bond was a homestead-waiver bond, and that therefore, counsel for the said defendants in his note of argument, need not consider or discuss the first question or inquiry raised and referred to in the said brief of plaintiffs' counsel. This first question, therefore, being thus eliminated from the discussion, there remain the two following questions to be considered and decided by the court:

First, whether or not the plaintiffs have the right to claim the homestead exemption as against the debt of $81.92 due from the estate of the decedent to the defendants J. W. Holland and G. D. Holland, by reason of the said defendants' having paid off the homestead-waiver bond, jointly executed by the said decedent and the said defendants, and secured by a deed of trust jointly executed by them upon the tract of land in the proceedings mentioned, and for the partition of which this suit was brought.

Secondly: whether the $300.00 recommended by the commissioner as a fair valuation for the decedent's interest in said land shall be treated as personalty or as real estate.

With reference to the first of these inquiries, we contend that the homestead exemption cannot be legally claimed against the said debt. For this said debt is due to the said defendants J. W. Holland and G. D. Holland, by reason of their having paid off the bond, in which the decedent was jointly bound with them as a co-obligor, which said bond contained a waiver of the homestead exemption, and was secured by a deed of trust, in which the said decedent, as one of the grantors therein, conveyed all his interest in the said land, in which said interest plaintiffs now

seek to assert their claim of homestead exemption.

The doctrine of contribution, upon which plaintiffs' counsel seems mainly to rely, applies to cases in which the debt paid off by a co-obligor is a simple, ordinary debt, devoid of security, lien, or other advantage, and where the doctrine, therefore, resting as it does upon equitable principles, can be applied without working an injustice, and without doing violence to equity and good conscience. But, where the debt thus paid off constitutes, or is secured by, a lien upon property, or where from its nature it possesses a special dignity or priority or some such other advantage over other debts of the debtor, the co-obligor paying it off will be subrogated to the securities, liens, or advantages of the original creditor to the extent of the payment made on the debt.

Faires v. Cockrill, 28 L. R. A. 531.

Tompkins v. Mitchell, 2 Rand. 428.

In Faires v. Cockrill, supra, Judge Brown, in delivering the opinion of the court, says:

"When the creditor in such a contract has a security from the principal, obligor, or either of them, or if the debt itself constitutes a lien upon property of the debtor, as a vendor's lien, or, if from its nature it be entitled to priority in payment over other debts of the debtor, the person paying the debt, not being a volunteer, will be subrogated to the securities, liens and priorities of the creditor to the extent that he makes payment on the debt; and if it be necessary from the character of the lien or security, in order to do full justice between the parties, equity will treat the original debt as subsisting, so far as may be necessary to accomplish that end."

And in Tompkins v. Mitchell, above referred to, the doctrine of subrogation was enforced in behalf of a principal debtor against a co-debtor, where the former had paid more than his proportion of the debt, by substituting him to the rights of the creditor, whose vendor's lien he had discharged, the court holding that,

as between themselves, each was a principal debtor for his one-half of the debt; and the one paying more than one-half was surety as to the excess paid by him.

In further support of our position, we quote from Sheldon on Subrogation, sec. 169:

"The usual rule is that one of several joint debtors will, as against his co-debtors, ordinarily be subrogated to the securities and means of payment of the common creditor whom he has satisfied, so as to enable him to recover from his co-debtors, by means thereof, their proportional shares of their indebtedness which he has discharged; and this, as in other cases of subrogation, arises rather from natural justice than from contract. Each joint debtor is regarded as a principal debtor for that part of the debt which he ought to pay, and as surety for his co-debtors as to the part of the debt, which ought to be discharged by them."

As to the second inquiry, we think that plaintiffs' counsel misinterprets the spirit and significance of the statute(Va. Code, sec. 2564), when he construes it to mean that the dividend of an infant or insane party, in a partition suit, not exceeding $300.00, becomes personalty, because it is there provided that such dividend shall be paid to the guardian of such infant or the committee of such insane person. We do not think that it was the purpose or intention of the said statute to determine or distinguish the character of the dividend, as between realty and personalty, by the amount thereof, but that it simply made provision, whereby small dividends not exceeding $300.00, without regard to their character, should be paid to the guardian of the infant or the committee of the insane person, instead of being invested under the order of the court. Differing thus from plaintiffs' counsel, we contend that the $300.00 in this case, being the share or interest of the decedent in the said land, resulting from a partition thereof, should be considered and treated as realty.

Turner v. Dawson et als., 80 Va. pp. 850, 851.

In the case of Turner v. Dawson et als., above referred to,

Judge Richardson, in delivering the opinion of the court, says:

"The power of compelling partition by sale, when partition in kind was impracticable, came by statute at a much later period. And we find, as a rule, that when the sale was made, and the person entitled was under disabilities, courts of equity gave the impress of realty to the proceeds before any statute requiring them to do was passed. Thus, independently of any statute, the right was asserted in equity to hold the proceeds of land sold for partition, with all the ###### privileges and burthens incident to real estate, until some act of a party sui juris made the conversion. **********And a long line of English authorities might be cited to the effect that where land has been sold, not by voluntary negotiation, but by the compulsory proceedings authorized by statute, and the money paid into court, it continues to be real estate until it is taken out by some person having the right to elect to treat it as money, that is, by some person sui juris, who is the unfettered owner."

— Reply to obaor —

In the case at Bar, the Co-obligors paid off the debt, and at their own request the lien was released and annulled. There is therefore in my judgment no subrogation to the original lien, but at most a right to ask that decedent's estate contribute. I submit that this does not present the Homestead being claimed.

Respectfully Submitted.

June 11. 1904

Jas. L. McLemore

Exceptions are hereby taken to the report of J.B. Prince, ~~Special~~ Commissioner filed in the chancery cause of Maggie Holland and others, vs. J.W. and George D. Holland on September 16th 1903, for the following errors in the said report contained, to-wit:

1st. Error in allowing a debt of $81.92 against the estate of said decedent, asserted by J.W. and Geo. D. Holland - because same is not supported by sufficient evidence - and also because payment of same was voluntary and the original debt being cancelled - no debt against decedent remains -

2nd. In allowing as a claim and charge against the estate of decedent $237.42 in favor of J.W. & Geo. D Holland, when the evidence shows that at most they were voluntary creditors of decedent, upon whose estate no obligation rest to pay them + also for the reason that said claim is not supported by proper and sufficient evidence -

March 21. 1904

Maggie Holland
by Jas. L McLemore
her atty.

Maggie Holland et al

v.

Defendant.

of Maggie Holland, widow -

J.W. & G.D. Holland

Contra tentum: 89 Fed. 709

9 Cyc. 794-802

W. Lemmon & Corbett
P.P.

tate or personalty, but if the court holds the same to be real estate, then she desires same set aside as homestead in accordance with the statute in such cases made and provided, and if the court should decide that same is personal estate then she desires to be allowed to set the same aside by a proper writing as set forth in said statute laws.

In tender consideration whereof she prays that this petition may be duly filed and considered along with the chancery papers and proceedings of Maggie Holland and others against J. W. and George D. Holland; that she may be allowed to claim the homestead in the interest of her husband in the property in the bill and proceedings mentioned, and that the claims as asserted by the said J. W. and George D. Holland may be declared subsequent to her rights as a house-holder; that all such further, general and special relief may be granted as the nature of her case may require or to equity shall seem meet. And your petitioner will ever pray, &c.

Maggie Holland
by McLaurin & Corbitt pp

IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY

=======0=======

Maggie Holland and others

v.

J. W. and George D. Holland.

=========0=========

Your petitioner, Maggie Holland, widow of Edgar Holland, deceased, respectfully represents that there is pending in the Circuit Court of Southampton County a chancery suit brought by your petitioner and her two children, Ruby and May Holland, against J. W. and George D. Holland, for the purpose of having a partition of the real estate owned jointly by the said defendants and your petitioner's husband, the said Edgar Holland, now deceased; that the said defendants were willing to value the interest of the said Edgar Holland, deceased, at three hundred ($300.00) dollars, and this was agreeable to your petitioner, and she has so stated, but as soon as this agreement was arrived at, the said J. W. and George D. Holland asserted claims against the estate of the said decedent to the amount of about $237.42 with the costs of the proceedings added, which will just about consume the entire sum from the said estate, leaving your petitioner nothing with which to maintain herself or care for her infant children.

Your petitioner also respectfully represents that she is advised that she has the right to set aside the said interest as a homestead for the benefit of herself and children, which she now desires to do, and while she does not know whether the interest which her husband had in the property of three hundred ($300.00) dollars, as previously agreed, subject to the approval of the court, is or will be considered real es-

Holland Briggs et als.

vs. } Stat. of Rules

Holland et als.

Maggie Holland, Widow of Edgar Holland and Ruby Holland and Mary Holland infants who sue by Maggie Holland, their next friend vs. J. M. Holland and George D. Holland } In Chancery "

1902. 9th September, process issued to 2nd Sept. Rules.

1902. 2nd Sept. Rules Process returned executed

Bill and exhibits filed

Order Nisi

1902. 3rd Sept. Rules. Bill Taken for confessed

and cause set for hearing

Maggie Holland et al } Bill in Eq

v.

J. M. & G. D. Holland

W. Smore v Corbett Pq

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT OF SOUTHAMPTON COUNTY.

-----O-----

Your complainant, Maggie Holland, widow of Edgar Holland, deceased, and Ruby Holland and May Holland, infant children of the said Edgar Holland, (and your oratrix) who sue by the said Maggie Holland, their next friend, respectfully represent the following case:

That Edgar Holland in his life time was seized jointly with J. W. Holland and George D. Holland of a one fourth undivided interest in fee simple in a certain tract of land lying in the county of Southampton, Virginia, containing one hundred and twenty-eight (128) acres, more or less, known as the "Turner" tract, bounded by the lands of Mrs. S. A. Pope, J. L. Barham Jr., R. N. Darden and Mrs. M. J. Darden, and that the said J. W. Holland and George D. Holland owned the remaining three fourths of the said farm, having purchased one share from E. N. Holland and wife by deed dated August 28th.,1902.

Your oratrix states that Edgar Holland departed this life intestate sometime during the year 1899, leaving your oratrix and her two infant children, Ruby Holland and May Holland with no means of support, and no other property save such interest as they are or should be entitled to in the land aforesaid; that since the death of the said Edgar Holland, the property has been in the possession of J. W. Holland and George D. Holland, who, your orator presumes, have collected the rents and profits from the same: that your complainant has never received anything from the farm since the death of Edgar Holland, although the same has been used, employed, and cultivated every year.

Your oratrix is advised that she has the right to have the said land partitioned and her interest and that of her two infant children therein allotted to them, or the same sold and

and the proceeds allotted in accordance with the statute, so that the small revenue to be derived therefrom can be employed towards their maintenance and support.

Your oratrix further avers and charges that the said land is not susceptible of partition in kind, but that same may be sold, the present value of the widow's dower commuted and paid to her in cash, and the remainder employed towards the maintenance and support of the two infant children in accordance with the statute in such case made and provided.

In tender consideration whereof, and for as much as much as your oratrix is remediless in the premises, save by the aid of a court of equity where all such matters are alone and properly cognizable, to the end, therefore, that justice may be done, they pray that J. W. Holland and George D. Holland may be made parties defendants to this bill and required to answer the same, but answers under oath are hereby waived; that the said real estate in the bill and proceedings mentioned may be partitioned in kind if same can be done without injury to the interest of the parties, and if not, that same may be sold and the complainants shares allotted to them in accordance with the statute laws of the State of Virginia; that the present value of the dower interest of your oratrix, Maggie Holland, may be ascertained and paid to her; that the interest of the infants may be protected and employed for their maintenance and support; that all such other, further, general and special relief may be granted, accounts taken, inquiries directed, and orders and decrees entered as the nature of their case may require, or to equity shall seem meet. And notice is hereby given that the court will be asked to allow reasonable attorneys fee to plaintiffs counsel conducting this cause.

And your oratrix will ever pray, etc.

McLemore & Corbitt. p.q.