1860-003 Chancery Causes: David B. Pasteurs, Albert G. Shivers & Robert H. Whitfield, for &c.
Dale of Wright County VS Thomas Green's comt & Horatio Green's heirs

other SURNames [PasteURS & ShiveRS], Gay, WRench, Bell, Goodson, Wilkinson, Gale, Gray, NorFlett, NorFleet, BRitt [George W. BRitt & Company], Shepherd, Hall, Womble, GRiffin, Chapman, Holland, Young, Barrett, Bailey, Hines, Dick, Moody, DRiveR, Boykin [Womble & Wilson], WILSON, BRIGGS, Edwards, Daniels, PasteuR [PasteuR & ShiveRS], Kilby

Whitfield's

Pasteur & Thevis

vs. Ex Chy. Pats.

Greens Adms. Dal.

1859

May - Decree for
sale of land &c.

Sept. 16. 1859 (Supl.
& Comm. filed.

Octo. 1859 - Decree to
collect bond & make payts
to Pasteur & Thevis &c.

May 1860. Final decree

$3.00

4 Lines

Sent by Mail Carrier

Parties & Subpoenas.

Ch. Bill & Exhibits.

Green's heirs & adm'r

1858.

July rules Bill &c. filed & decree nisi vs. all except Wm. Green - who is not found.

Augt. Rules, Bill taken for confessed & set for hearing.

who has since intermarried with one Wright Norfleet
a widow, but left no child, and he never had a child. The question is, as to the land, whether Thomas Green had only a life interest, or a fee simple therein. If the former then only his proportional part thereof as one of Horatio Greens' heirs, will be liable to his debts. If the former latter, then the whole will be. Your orator alleges, that he had a fee simple. 1st because it was a fee tail & 2d because, if even the term "heir" be construed to mean a child or children, the land was intended to be given in fee, upon the event of his marrying, as they allege, that the true construction requires the word "and" to be substituted by, or changed into the word "Or". At all events they pray that the interest of the said Thomas Green, together with his personal effects, be applied to the payment of his debts.

Your orator, as informed that the following are the heirs of Horatio Green the father of Thomas Green (besides the latter) are Sally Wrench (a daughter) Elizabeth Goodson (formerly Green, & wife of Geo. Goodson) a daughter, William Green a son, Thomas Wilkinson, a grand son, being the son of Rachel a daughter of Horatio Green & Joseph H. Gale a grandson, being the son of Mary a daughter of Horatio Green dd. There are also the heirs of Thomas Green dec'd. That Thomas Wilkinson who it is believed died during the yellow fever in Norfolk, as he was not seen or heard from since & he was living there then or just before. they believe is about 21 years of age, and is a non resident of this State. if indeed he be living, as he has not been heard from in 3 or 4 years, as they are informed.

Your orator charge, that if the said Thomas Green had a fee simple in the said land, it would be the interest of all to sell the said land out & out, and give his widow a sum in fee, in lieu of her dower therein. & they pray that she be required to state in her answer whether she will accept the same. and in any event a sale of the land would be better, as this would be better than a partition thereof. your orator can without adequate remedy save it, unless sold. and that in any event it would be better to sell the land, & it should not be sold subject to a partition.

To the end therefore, they pray, that Enoch D. Gay Sheriff, and Committee of the estate of Thomas Green dec'd, Sarah A. Green (his wife) Wright Norfleet - Sally Wrench George Goodson & Elizabeth his wife, William Green, Thomas Wilkinson & Joseph H. Gale may be made parties defendant to this bill and be compelled to answer the same - That Enoch D. Gay, be required to render an account of his transactions as Committee

of said Thomas Green dec'd. That accounts be taken before a commissioner of this Court, of your orators debt & all others outstanding against the said deceased. That the said land may be sold, and such interest as the said Thomas Green may have had therein, be made liable for his debts - and grant all other relief as may be meet & fit in the premises.

R. H. Whitfield D.C.

To the Hon: Richd H Baker Judge of the Circuit Court of Isle of wight County, in Chancery sitting Humbly Complaining, sheweth unto your Honr, Jr Orator, David B Pasteur & al J. Shivers, late merchants & partners, heretofore trading under the style of Pasteur & Shivers, and Robt H. Whitfield who sue on their own behalf as for the benefit of others the Creditors of one Thomas Green dec'd; That the said Thomas Green departed this life, some time in the year 1857, intestate and without issue, but leaving a Widow, named Sarah A. Green. That Administration on his estate was committed to Jos. P. Gay Sheriff of Isle of wight County, as will appear by a copy of the Order of the County Court of said County. marked A & herewith filed as a part of this Bill. That the said Green was indebted to your Orator Pasteur & Shivers, in the sum of $20.82, as appears by an Act herewith filed: and that he was indebted to the said Robt H Whitfield in the sum of ~~$2000.00~~ $1000.00, subject to a credit of $294.68, with interest from the 15th day 1858, as will appears by his two bonds herewith filed, and they believe that the said Green was otherwise incidentally indebted to Others unknown to your Orator. That the said Thomas Green left a very small estate - quite insufficient to pay his debts - besides the proceeds of his personal property in the hands of the said Gay, he left no other, or had no other property, than a small parcel of land, lying in the County of Isle of wight, containing about acres, and worth perhaps $1000.00. Which was devised to him, by his father Horatio Green dec'd, - The said Horatio Green by the first Item of his last Will & testament, admitted to Probate in 1842, a Copy of which is herewith filed, uses these words, "I leave my son Thomas Green during his life - all the land lying on the North side of the road where I live, and in the event of my son Thomas marrying and leaving a lawful heir, I then give the said land to him & his heirs forever. Should he not marry and leave a lawful heir at his death I devise the land aforesaid to be equally divided between my heirs". Thomas Green as has been stated, married & left

Fustem Shivers Sals.
vs. Sleepy Bill
Greens. heirs &c

I devise the land aforesaid to be equally divided & ~~be equally divided~~ between my heirs". Thomas Green as has been stated; Married and left a widow who has since intermarried with one Wright Norfleet; but left no child, and he never had a child. The question is: as to the land, whether Thomas Green had only a life interest, or a fee simple therein. If the former then only his proportional part thereof as one of Horatio Greens heirs will be liable to his debts — If the latter, then the whole will be, your orators allege, that he had a fee Simple — 1st because it was a fee tail. & 2d because, if even the term "lawful heir" be construed to mean Child~~ren~~ or children, the land was intended to be given in fee, upon the event of his marrying, as they allege, that the true construction requires the word "and" to be substituted by, or changed into the word "or". At all events they pray that the interest of the said Thomas Green, together with his personal effects, be applied to the payment of his debts.

Your orators are informed — that the heirs of Horatio Green — the father of Thomas Green (both the latter) are Sally Wrench (a daughter) Elizabeth Goodson (formerly Green) a wife of Geny Goodson) a daughter; William Green a Son & who it is believed died during the yellow fever in Norfolk as he has not been heard from since. and Thomas Wilkinson, a grand Son, being the son of Rachel a daughter of Horatio Green, & Joseph H. Gale a grand Son being the Son of Mary — a daughter (the heirs) of Horatio Gre~~en~~ dec~~d~~. these are also of Thomas Green dec~~d~~. That Thomas Wilkinson is ~~not~~ non resident of this State — if indeed he be living — as he has not been heard from in 3 or 4 years — as they are informed. — Your Orators charge, that if the said Thomas Green had a fee Simple — in the said land, it — would be — the interest of all to sell the said land out right;

and give his ~~his~~ widow a Dow in fee, in lieu of her dower therein, & they pray that She be required to State in her answer whether she will accept the same. And in any event — a Sale of the land would be better, as that would be better than a partition thereof. Your orators are without adequate remedy save in this honorable Court. To the end — therefore, they pray, that Josiah P. Gay Sheff. & Committee of the estate of Thomas Green dec~~d~~. Wright Norfleet & Sarah A. his wife, Sally Wrench, Geny Goodson & Elizabeth his wife, William Green, Thomas Wilkinson & Joseph H. Gale may be made parties defendants to this Bill & be compelled to answer the same, that Josiah P. Gay, be required to render an account of his transactions as administrator of Said Thomas Green. That accounts be taken before a Commissioner of this Court, of your orators debts — and all other outstanding against the said deceased — That the said Land may be Sold, and such interest as the said Thomas Green may have had therein — be made liable for his debts. and grant all other relief as may be meet & fit in the premises.

R. H. Whitfield Sol.

A Copy

Test. J. C. Latimer D.C.

To the Hon: Richard H. Baker Judge of the circuit Court of Isle of Wight County, in Chy. Sitting— humbly Complaining, Sheweth unto your honor, Your orator, David B. B. Pastens & A. G Shivers, late Merchants & partners, heretofore trading under the style of Pastens & Shivers. and R. H. Whitfield who sue, as in their own behalf as for the benefit of others— the creditors of one Thomas Green dec'd. That the said Thomas Green departed this life, sometime in the year 1857. intestate and without issue, but leaving a Widow, named Sarah A. Green. That administration on his Estate was committed to Jos. P. Gray Esqr. of Isle of Wight County, as will appear by a copy of the order of the County Court of said county marked "A" and herewith filed as a part of this Bill. That the said Green was indebted to your orators Pastens & Shivers, in the Sum of $20.82, as appears by an acct: herewith filed. And that he is indebted to the said R. H. Whitfield in the Sum of $1000:00. Subject to a credit of $296.68. with interest from the 18th. Jany. 1858, as will by his two bonds herewith filed, and they believe that the said Green was otherwise considerably indebted to others— unknown to your orators. That the said Thomas Green left as very small estate— quite insufficient to pay his debts— besides the proceed of his personal property in the hand of said Gray, he left no other, or had no other property, than a Small parcel of land, lying in the County of Isle of Wight, Containing about ——— Acres. and worth probably $1000:00. which was devised to him, by his father Horatio Green dec'd. the said Horatio Green by the first item of his last will and testament, Admitted to probat in 1842. A copy of which is herewith filed, uses these words", I leave to my Son Thomas Green during his life— all the land lying on the North Side of the road where I live, and in the event of my Son— Thomas marrying and leaving a lawful heir, I then give the said Land to him and his heirs forever. Should he not marry and leave a lawful heir at his death

Green

v.

Green's heirs

answer of
Infant Defts

The answer of Abram P. Norfleet and Sarah A. his wife to a Bill in Chancery filed in the Circuit Court of Isle of Wight County, by

(and others) against

These Respondents say that it is true the said Sarah was late the widow of Thomas Green dec'd & is now the wife of said Norfleet — They claim that the Land named in the Bill is, under the will of Horatio Green the Land in fee simple of Thos. Green and if so, they pray that Dower may be set apart & assigned her in said Land — But if the Court decide that such is not the case, & that Thos. Green has a life Interest therein then these Respondents agree & consent that said Land may be sold & agree to take in money in lieu, an equivalent to any Interest they have therein — That the said Sarah is now in her twenty third year of age.

his
Abram P. + Norfleet
mark
Sarah A Norfleet

Francis Heist &c

als S

Pastures &al

answer of

Geo: Gordon

Isle of wight

clearly is not to give his son Thomas a fee simple estate in said land except in the event, both, of his marrying and leaving a lawful heir; and your Respondents is advised that this Court will not convert a life or other uncertain or Contingent estate into a fee, unless compelled by some rule of law — and he is advised & charges that no such rule of Law exists — That the Testators will was made in 1842, when the rule of law was and is now, that limitations, such as are contained in Horatio Greens will giving the said land to Thomas Green, are good provided it is to take effect at the death of Thomas Green, he not having been both married & leaving a lawful heir, which your Respondents avers is not the case.

Your Respondent, avers that leaving a lawful heir, means "leaving a child or children."

That both the events not happening as required & said Horatio Greens will, Thomas Green on his death ceased & have any other or further interest therein, and that then the land, according to the Testators will, became the property of the heir, then living of Horatio Green and that is to say the property of Horatio Greens heirs living at the death of Thomas Green — That any other construction would involve an absurdity for it would virtually say, that although, the Testator had expressly prevented Thomas Green from taking the whole land in fee, unless he married & had a lawful heir (meaning child) that yet, if he have no lawful heir, he should have a part in fee —

That the heirs of Horatio Green living at Thomas Greens death, are correctly stated in the Bill, omitting Thomas Green (a son of Horatio Green) which your Respondent avers is a mistake and that the said land should be sold, your Respondents believes is true, as being best promotive of the interests of all concerned —

Your Respondents therefore pray that the Land aforesaid may be decreed to the heirs, of Horatio Green, living at Thomas Greens death, and that all further relief may be granted, consistent with equity &c.

John R Kilby attr

Signed
his
George X Goodson
mark

County to wit.

This day George Goodson came before me & made oath that the facts set forth in the foregoing answer are, so far as he knows and believes, correct and true — Given under my hand this 30 day of Sept 1858.

Nath. Riddick J.P.

The answer of George Gordon
to a Bill in Chancery filed in the Circuit
Court of Isle of Wight County, by David
B. Pastures & others, against Thomas Green, per=
sonal Representative and others

This Respondent, saving &c says that
it is true as alleged, that Thomas Green died
in the year 1857 intestate & without issue leaving
a widow as stated — that his estate has been
committed to the hands of Mark P. Gay Sheriff
&c. for administration — That as to the debts
charged to be due, they are no doubt correct
but proper proof is required — That the said
Thomas Green died possessed of the Land referred
to & which was devised to him by his father
Horatio Green as stated in the said bill —

Your Respondent denys that Thomas Green
took a fee simple estate in said Land, either
in whole or in part, or the contrary & he
is advised his interest therein ceased on his
death entirely, & that he does not take any
part as an heir of Horatio Green —

Your Respondent is advised, and charges
that Thomas Green took the Land for life only
unless he should both marry and leave a lawful
heir — in which case he took a fee simple
estate — That the word: "and" between marrying
and leaving should not be converted into "or"
as the evident intention of Horatio Green
is to make the fee simple estate in Thomas
Green Contingent on both events — marrying
and leaving a lawful heir; and that such
being his intention it must be carried into
effect — That the intention of the Testator

Pastures & Shores
Sals. —
n. 3 Sund.
3 in Cl.

Wrench, Green
Sathers

To July Cels. 1858
Wakefield Jy.

Not found
Thos. J. Carpenter
Sergeant

THE COMMONWEALTH OF VIRGINIA, Norfolk City

TO THE SHERIFF OF ~~ISLE OF WIGHT~~ COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON, William Green

to appear before the Circuit Court of Isle of Wight county, at the Court-House of said County, on the first ~~day of~~ Monday in July ~~term~~ next, to Answer the Bill in Chancery of David B. Pasteur & Albert G. Shivas, heretofore merchants & partners trading under the firm & Style of Pasteur & Shivas — and Robert H. Whitfield who sues as well for themselves as other creditors of Thomas Green dec'd.

: and have then and there this Summons. *Witness*, NATHANIEL P. YOUNG, Clerk of our said Court, at his Office, this 23 day of June, 1858, in the 82? year of the Commonwealth.

N. P. Young c

D. B. Pastan dat.
3 Sund. in
n. 3 Cly.
Norfolk Virginia dat.

To July Ender 1858
Whitfield Jr.

Executed and a true copy sent to be delivered
Thomas Wilkinson, Norfolk Virginia & sent
to his order

Wilkinson
Lyle & Pastan

THE COMMONWEALTH OF VIRGINIA, Nansemond

TO THE SHERIFF OF ~~ISLE OF WIGHT~~ COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Thomas Wilkinson, & Wright ~~or Abraham~~ Norfleet & Sarah A. his wife (formerly Green, late widow of Thomas Green dec'd.

to appear before the Circuit Court of Isle of Wight county, at the Court-House of said County, on the first ~~day of~~ Monday in July ~~term~~ next, to Answer the bill in Chancery of D. B. Pastens & others — filed against them &c.

: and have then and there this Summons. *Witness*, NATHANIEL P. YOUNG, Clerk of our said Court, at his Office, this 28th day of June, 1858, in the 82d year of the Commonwealth.

N. P. Young cc.

Executed and return Copy hereof
delivered to George Goodson and to
Elizabeth Wiseman
William Pool
Test
Jos. R. Savage Jr

Patent Office
Dec. 3 1845
B. Shaw
Chief Clerk
& Actg
Commr
Pat. Off. 1845.
Mayfield Ky.

THE COMMONWEALTH OF VIRGINIA, Nansemond

TO THE SHERIFF OF ~~ISLE OF WIGHT~~ COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON George Goodson and Elizabeth his wife

to appear before the Circuit Court of Isle of Wight county, at the Court-House of said County, on the first ~~day~~ of Monday in July ~~term~~ next, to The bill in Chancery of David B. Pasteur & A. G. Shivers late of said county & partners trading under the name & style of Pasteur & Shivers, and Robert H. Whitfield who sue as well for themselves as all the creditors of Thomas Green dec'd. filed against them & others.

: and have then and there this Summons. *Witness*, NATHANIEL P. YOUNG, Clerk of our said Court, at his Office, this 23d day of June, 1858, in the 82d year of the Commonwealth.

N. P. Young cl.

Service acknowledged
John R Kilby
for Wm Green

THE COMMONWEALTH OF VIRGINIA, Norfolk city

TO THE SHERIFF OF ~~ISLE OF WIGHT~~ COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON ~~Samuel Edwards~~

William Green

to appear before the Circuit Court of Isle of Wight county, at the Court-House of said County, on the first ~~day of~~ Monday in July ~~term~~ next, to Answer the Bill in chancery of David B. Pastens & Albert D. Shims heretofore Merchants & partners - trading under the name & style of Pastens & Shims, and Robert H. Whitfield - who sues as well for themselves as other creditors of Thomas Green dec'd.

: and have then and there this Summons. *Witness*, NATHANIEL P. YOUNG, Clerk of our said Court, at his Office, this 23 day of June, 1858., in the 82 year of the Commonwealth.

A Copy

N. P. Young c

Pastur & Shivers Pals.

vs.: Sum'n in Chy

Sarah Wrench Pals.

To July rules 1858.
Cir. Ct.
Whitfield Cly.

Executrix of Abiezer Wrench dec'd
Pro Bill &c to obtain Probate of the
Last Will & Testament of Said Abiezer
Wrench dec'd and for Relief &c

Bill Answer &
Dis. Ord. Cly Sum

Make return on them

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ISLE OF WIGHT COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Sarah Wrenche, George Goodson and Elizabeth his wife, Joseph H. Gale, William Green, Josiah P. Gay Sheriff &c Committee of the estate of Thomas Green dec'd, Sarah A. Green widow of Thomas Green dec'd. and Thomas Wilkerson

to appear before the Circuit Court of Isle of Wight county, at the Court-House of said County, on the first ~~day~~ of Monday in July ~~term~~ next, to answer the bill in Chancery of David B. Pastour & Albert G. Shivon heretofore copartners trading under the name & style of Pastour & Shivon and Robt H. Whitfield who sue as well for themselves as other creditors of Thomas Green dec'd.

: and have then and there this Summons. *Witness*, NATHANIEL P. YOUNG, Clerk of our said Court, at his Office, this 23d day of June, 1858, in the 82nd year of the Commonwealth.

N. P. Young Cl.

2 Horses
1 "
4 "
1 "

Partners
&
Green's case

Memo of
heirs for Mr
Young —

Make up report
under decree.

1st — Young's transactions as
comm. of Green
2d — acct. of debts v Young
est. & their priority
including pltff's demd.
3d — acct. of the heirs of
Horatio Green decd.
at death of Thos. Young
relation to 1st & 2d Qs.

154698 : 27927 = 280
2250
2234160
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1781960 (5052
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846603
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280) 5052 (18.
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2240
14

Horatio Green's heirs at the death of Thomas Green.

Thomas Green (dead no issue) — Sarah[2] Wrench widow of — Elizabeth[3], now wife of Geo. Goodson

[4] Mary Gale, dead left son Jno. N. Gale

[5] Jno. Green dead left son Wm Green

[6] Rachel late wife of Thos. Wilkinson dead left child named Thomas Wilkinson not heard of for 4 yrs his father dec'd

[7] Nancy Green dead no issue

[8] Jno Green dead no issue

Recapitulation

Present heirs

1. Sarah Wrench
2. Geo. Goodson & Elizabeth his wife
3. Jno. N. Gale (grandson)
4. Thos. Wilkinson (father of Thos. a son of Rachel late Green & wife of Thos Wilkinson
5. Wm Green son of Jno. Green

The Estate of Thomas Green deceased

In account with Josiah S. Gay Sheriff County of his

1857		To said Taxes & Clerks tickets	15 77	
		" " Clerks tickets	3 10	
		" " Taxes on Gibbs land	5 68	
1858 Feby.	1	" " for Coffin & burial expenses	13 00	
		" " Expenses at sale	1 63	
	8	" " E. S. Ely auctioneer at sale	2 00	
	14	" " Do. Constl: Expos: in his hands in decedents lifetime in favor of A. J. Thomas	20 49	
		" " Do. do. in favor of A. Pendleton	6 24	
		" " Do. do. " " " T. E. N. Wills	6 65	
Mar.	1	" " Appraisers	3 00	
		" " Rs. H. Whitfield atto: fee for services to est.	6 50	
		" Commissions on $401: 93 rects.	20 10	
		" Commr. Hayden for services rendered est.	16 50	
		" Clerks fees for recdg. act. sales, appmt. &c	3 00	
Sept.	6	" Balance due the estate per contra	279 27	

1858 Cr.

Jany. 1 By amount of act. of sales due this day 401 93

$ 401 93 401 93

An account of the outstanding debts due by Thomas Green dec'd: and their dignity, including the pltffs. demands.

Pasteur & Shivers (Plaintiffs) act.	20 82	
Interest from 5th July 1857	2 70	23 52
Robert H. Whitfield (Plaintiff) bond (bal)	205 32	
Int. from 15th Jany. 1858	20 19	225 51
Same (Pltff.) bond	500 00	
Int. from 15th Jany. 1858	49 25	549 25
Wm. H. Goodson paid to A. Sigourney as security for decedent	10 96	
Int. from Aug. 5th 1858	60	11 56
Do. paid to Do. as security for do.	93 33	
Int. from Aug. 5. 1858	5 13	98 46
George W. Brill bond	12 99	
Int. from 15th Apl. 1856	2 64	15 63
Geo. W. Brill & Co. act.	3 14	
Int. from 1st. Jany. 1857	50	3 64
Joseph Gale paid E. Shelburne as security for decedent	8 38	
Int. from Aug. 17. 1858	53	8 91
Do. paid Thomas Gale as security for Do.	80 68	
Int. from Apl. 28. 1858	6 56	87 24
Do. act. ~~Int from~~	3 17	
Int. from 1st. Jany. 1858	32	349
Amt. carried fwd.		$1027 21

Amt. brought forward			$1027 21
Joseph Gale act.	8 99		
Interest from 1st. Janry. 1855	2 52	11 51	
H. H. Womble Bond	10 80		
Int. from Decr. 4th. 1850	5 67	10 47	
Do. paid to Thomas Carroll as security for defendt	74 15		
Int. from 1st. Nov. 3d. 1857	8 18	82 33	
Thomas Griffin Bond	10 00		
Int. from 1st. May 1857	1 41	11 41	
James Chapmans Est. Bal: on Bond	3 38		
Int. from Mar. 2d. 1857	57	3 89	
Hardy Holland act.	85 00		
Int. from Nov. 1. 1858 by average	4 32	89 32	
A. P. Young Bond	45 00		
Int. from 2d Janry. 1857	7 23	57 23	
Ro. F. Burrell Bond	2 43		
Int. from Feb. 15. 1857	37	2 80	
Do. act.	2 25		
Int. from 1st. Janry. 1858	23	2 48	
Ro: Bailey (F. N.) Judgment for	19 60		
Int. on 11.20 part from Octo. 8. 1856	1 95	13 55	
Norman Hines Bond	7 78		
Int. from 4th. Apl. 1857	1 12	8 90	
Robt. T. Dick Bond	50 00		
Int. from Janry. 1. 1858	5 03	55 03	
Do. Dew bill	3 97		
Int. from Decr. 20. 1856	65	4 62	
Roland Bell Bond	10 00		
Int. from Feby. 20. 1857	1 53	11 53	
J. J. Moody act.	6 00		
Int. from Sept. 5th 1857	72	6 72	
Do. as Exr: of Wm H. Driver	60 00		
Int. from Feby. 7. 1857	9 29	69 29	
Do. paid as security to Jas. Gray	18 92		
Int. from 3d. Decr. 1857	1 99	20 91	
Do. act.	4 00		
Int. from 1st. Janry. 1858	40	4 40	
Dr. Anthony G. Boykin act.	22 75		
Int. from 1st. Janry. 1858	2 31	25 06	
Womble & Wilson Judgt.	2 70		
Int. on 2.30 from 26. June 1857	44	3 14	
Merit Briggs Judgt.	7 55		
Int. from 1st. Janry. 1857	1 15	8 70	
D. D. Edwards paid as Secty. to H. H. Womble	11 29		
Int. from 30. Decr. 1857	1 14	12 43	
Mills Daniel act.	2 61		
Int. from 1st. Janry. 1857	42	3 03	
Total amt. of debts			$1546 96

An account of the heirs of Horatio Green dec'd. at death of Thomas Green

1st Thomas Green (who has died leaving no issue) a son.
2d Sarah Wrench (widow of John Wrench dec'd.) a daughter.
3d " Elizabeth Goodson (wife of George Goodson) a daughter.
4th Mary Gale (who has died leaving a son Jos: H. Gale) a daughter.
5th " John Green (who has died leaving a son Wm: Green) a son
6th Rachal, late wife of Thomas Wilkerson (who has died and left a son name Thomas Wilkerson, not heard from for 4 years- his father the heir) a daughter.
7th " Nancy Green, dead leaving no issue, a daughter.
8th " George Green, dead and no issue, a son.

Recapitulation.
Present heirs.

1 Sarah Wrench.
2 George Goodson & Elizabeth his wife.
3 Joseph H. Gale, grandson.
4 Thomas Wilkerson (father of Thomas- a son of Rachal late Green & wife of Thomas Wilkerson.
5 William Green son of John Green dec'd.

Commissioners Office, Isle of Wight Courthouse.
September 16th 1859.

To the Circuit Court of Isle of Wight County.

Pursuant to a decree of the Circuit Court of Isle of Wight County, rendered of the day of May 1859, in a suit in Chancery therein depending, in which David B. Pasteur and Albert G. Shivers late merchants and partners under the style & firm of Pasteur & Shivers, and Robert H. Whitfield are plaintiffs, and Sarah Wrench, George Goodson & Elizabeth his wife, Joseph H. Gale, William Green, Josiah P. Gay Sheriff & Comm'r: of the estate of Thomas Green dec'd: Sarah A. Green widow of Thomas Green dec'd: and Thomas Wilkerson are defendants, requiring one of the Commissioners of the said Circuit Court to take the following accounts, to wit:
1st An account of the transactions of Josiah P. Gay Sheriff & Committee of the estate of Thomas Green dec'd.—
2nd " An account of the outstanding debts due by Thomas Green dec'd: and their dignity, including the plaintiffs demands.
3rd " An account of the heirs of Horatio Green dec'd: at the death of Thomas Green. The undersigned, one of the Commissioners of the said Court, reports to the Court that, after having published notice of the taking of said account, for four weeks

succession, in the "Southern Argus" he proceeded to make up the foregoing account, marked respectively A. B. & C. but not being able to complete the same on the day so appointed, (Court: 15th of Sept. 1839) your Commissioner continued the same until the date of this report, when they were completed.

A. Account A. shews that on the 6th day of September 1838, there was a balance of $279.27 due the estate of Thomas Green dec'd. from Josiah P. Gay sheff. & committee of said estate.

B. Account B. shews the amount of debts still outstanding against the estate of Thomas Green dec'd. still out standing, including the plaintiffs demands, to be $1546.96

C. Account C. Shews the heirs of Nicholas Green dec'd. at the death of Thomas Green.

Given under my hand as a commissioner of the said Circuit Court, the day & year first aforesaid.

N. P. Young

Time employed by the Commissioner 10 hours. Commissions fee $7.50 Chg'd. to Pltffs.

N. P. Young com'r.

Pastear & Shivin sols.
vs. Com'r. Young
Report.
Green adm'r. sols.

Sept. 16th. 1839 filed

Oct. Nov. 1. 1859. Recd. of
J. P. Young, clerk of the circuit
court of Isle of Wight County, the
bond of Mrs. Briggs for
$415. 00 which was returned
with the within report.
Jos. R. Gay

Patents
By
Francis Adams
Report of J. P. Young
Esq.

In the Circuit Court of Isle of Wight County

The Undersigned, pursuant to the decree of the 17th May 1859 made in the Chancery cause in this Court wherein Pastens & Shivas & others are plaintiffs and Sarah Wrench & others defendants, proceeded to advertise the Land referred to in the proceedings & did on the 4th July 1859, before the Court House of said County, sell at auction on six months credit with Interest from date, the Land aforesaid when the same was purchased by Merit Briggs for $415.00

I paid for advertising the sale in the Christian Sun" $3.50

& my Com. are 5 P. ct. on $300. 15.00

& 2 Do. on $115. sale. 2.30

& I have reserved for deed 2.50

Making amo. due me $28.30

which Bond of M. Briggs. is filed herewith

Respectfully submitted

Josiah P. Gay
Sheriff

Pasteures &c

vs } Report of Sheriff & Comr.

Green's dal.

filed 16 May 1860
with statement
filed herein of
payments.

I have paid out and distributed the sum of $401.93 in my hands as administrator of the estate of Thos. Green dec'd. as directed by said Decree as will appear by Statement and receipts filed herewith. I have also made a Deed for the Land sold under the proceedings in the cause to Merit Briggs purchaser.

Respectfully submitted.

Josiah P. Gay Sh'ff

1860 July 6. Rec'd of J. P. Gay Sh'ff. the sum of seventy dollars and sixty four cents for each of the following parties

John R Kelly atty for Sarah Wrench
Geo. Gordon tribe
Thos. Wilkinson &
Wm. Green

1860 July 6. Rec'd of J.P. Gay Sh'ff. our costs in foregoing case.
Williams Elg Dy for Elgin R. Savage Sh'ff $2.50

To Circuit Court of Isle of Wight County—

The Undersigned Reports to Court that pursuant to the decree of 19th Oct 1859 in the cause of Pastures &c. vs. Wrench. &c. I received of the clerk of said Court the bond of Merit Briggs filed in the cause & have collected the same, to wit: Bond $415.00

Int from 6 July 1859 to 19 Jany 1860 13.75

$428.75

To paid costs of suit to wit.

To Ro. H. Whitfield attn. $16:50 paid to Rob H Whitfield

" Clerk's fees 9.98 P. N. P. (Jonny)

" Sheriff of Nans. 2.50 P.

" Sheriff I. of W. 1.50 P.

" Com Young 7.50 P. N. P. (Jonny)

" Do. " 11.25 P. N. P. (Jonny)

" Do. for Argus 5.00 P. N. P. (Jonny) 47.23

Nett Balance $381.52

~~To Act. Com $30~~ ~~$45.00~~

" ~~Do. $ [illegible] 57~~

I then paid myself as per said decree 28.30

$353.22

I then paid Jno. R Kelly atty. for

Sarah Wrench 1/5 per decree $70.64

" to John R Kelly 1/5 for Geo. Gordon & wife 70.64

" To John R Kiely atty. for Thos. Williams 70.64

" To Do. atty. for Wm. Green 70.65

" To retained for M. H Gale per decree 70.65 $353.22

(over)

Eastern Shores Dist.

Statement of

vs. Supt. of D. P. Govt.

of payments to Austin

Greens Admr. Dist.

filed with D. P. Gaz
Report.

December 31st 1857 Received of
Joseph P Gay adm. of Thos Green
Eleven Dollars & fifteen
Cents in full of two Judgments
in my hands vs. him in favour of
David Cohen & John Y Phillips said amt.
has been Garnished in his hands vs Hardy
Holland

Jas. E Slaughter

Mr Josiah P. Fay (Assignee) will please
pay to Jas. L. Woody the amt. which may
be due me from Thos. Greens Estate amt. of
Bond was $60. What Ever the amt. may be
I assign to him and wish you to pay accordingly

Witness
Wm H. Ts
1857

Wm H Davies
for Jos A Christian

203
1.60
4 lb

A Statement Shewing the amounts due & paid to the Credetors of Thomas Green dec'd. pro rata, by Jos. P. Gay Shff. & Comm'r. under decree of circuit Court. Octo: 19th 1859.

Names of Claimants.	Amt. of each claim	allow'd.	Pro rata Amt. paid.		Recieved the Amt. opposite our Names respectively
Pasteur & Shivers	$ 23	52	3	52	Pasteur & Shivers
Ro. H. Whitfield	225	51	33	82	Robt H. Whitfield
Same	549	25	82	38	Robt H Whitfield
William H. Goodson	19	56	1	73	Wm H. Goodson
Same	98	46	14	76	Wm H. Goodson
George W. Britt	15	63	2	34	Geo W Britt
Geo. W. Britt. Exo.	3	64		55	G W Britt Exo
Joseph Gale Sr. as Security T. Shepherd	8	91	1	33	Mary F. Gale
Same Sr. as Security to Thos: Hall	87	24	13	08	Mary F. Gale
Same	3	49		52	Mary F. Gale Admx.
Joseph Gale	11	57	1	73	Mary F. Gale
H. H. Womble	16	47	2	47	Retained by Jos. P. Gay
Do. ant. Sd. Thos. Candler Sely	82	33	12	39	$76 Thos. Candler Jas. E. White
Thomas Griffin	11	41	1	71	Thos. Griffin
James Chapman's Exrs:	3	89		58	J. P. Chapman
Hardy Holland	89	32	13	40	Stallings Ck. Jas. Lack in my hands Retained in J. P. G.
N. P. Young	52	23	7	83	N. P. Young
Ro. F. Barrett	2	80		42	Ro. F. Barrett
Same	2	48		37	Ro. F. Barrett
Ro. Bailey Sr.	13	55	2	83	R F Chapman Comr
Norman Hines	8	90	1	33	Norman Hines
Ro: T. Dick	55	03	8	25	Robt. T. Dick
Same	4	62		69	Robt. T. Dick
Rowland Bell	11	53	1	80	Rowland Bell
Jas. J. Moody Decd.	6	72	1	00	Jas J Moody
Same Agent of Wmbd. Driver	69	29	10	39	Jas J Moody
Same as Security Jos. Gray	20	91	3	13	Jas J Moody
Same on act.	4	40		66	J J Moody
Anthony G. Boykin	25	06	3	75	Robt H Whitfield Admr
Womble & Wilson	3	14		47	Paid
Merit Briggs	8	70	1	30	Ed Ely Comr for M Briggs
D. D. Edwards Secty to H. H. Womble	12	43	1	86	David D. Edwards
Mills Daniel	3	03		45	N. P. Young Admr.
	$ 1546	96	23		

To Amt. of Assets: . . $379.27

By Amo. for Tax $16:50
Clks. fee 9.98
Shff. Fees 2.50
Do. L.O.W. 1.50
Comr. (Young) 11.75
Southron Argus 5.00 47.23

Nett amt. to distribute $232.04 $232 04

Test N. P. Young Comr.

due the said Gay - as appears by his report, & the balance - pay as follows; One fifth to Jno. R. Kilby attorney for Sarah Wrench, One fifth to Jno. R. Kilby attorney for Geny Goodson & Elizabeth his wife, one fifth to Jno R. Kilby attorney for Thos. Wilkerson; one fifth to Jno R Kilby attorney for Wm. Green & one fifth due to Joseph H. Gale be retain'd by said Jno. P. Gay till the further order of Court; and make a deed to the said Merit Briggs - the purchaser of the land aforesaid, and Report to Court. -

Hoby

Test. F. C. Latimer D.C.

Bill of Costs.

Atts. Hay	$16.50
Clk. fee	9.98
Sheff. Nans?	2.50
Sheff. I. O. Wight	1.50
Cont. Comm. for ack. dispt	7.50
Do. for Statute &c	4.25
Southern Argus office	5.00
$ [illegible]	
$47.23	

"Collected"

January 19th 185 Briggs Bond. $415.00
Mds from Jan. 6. 185 4 mos. 19 13.75
$428.75

Pattens & Shivers
vs.
Briggs Decree
Decree Admr. &c.

At a Circuit Court continued & held for Isle of Wight County on the 19th day of October 1859—

David B. Pastens & A G. Shivers, Surviving Partners of the firm & Style of Pastens & Shivers, & Robert H. Whitfield who sues as well for themselves as other creditors of Thos. Green decd. Plffs.

Against

In Chancery.

Sarah Wrench, George Woodson & Elizabeth his wife, Joseph H. Gale, Wm Green, Josiah P. Gay Shff. & Committee of the estate of Thomas Green decd. & ~~Sarah A, his wife late widow.~~ and Alva. P. Norfleet & his wife late widow of Thomas Green decd. & Thos. Wilkerson Defts.

This Cause Came On again to be heard On the papers formerly read, & the reports of Commissioner N. P. Young & Jos. P. Gay, made in pursuance of the Order entered herein of the May Term 1859. to which no exceptions were filed, And was argued by Counsel: On Consideration whereof, The Court Confirming said Reports, doth adjudge order & decree that Josiah P. Gay admr. of Thos. Green decd. out of the assets of the intestate in his hands—to wits; The sum of Four hundred & one dollars—and ninety three cents, pay first, the Costs of this suit: And out of the balance, pay pro-rata, the several creditors of the said Thos. Green decd. as pr. report of the said Commissioner Young appears to be due & owing by Comm. Youngs. Report aforesaid—& make report to Court. And the Court doth further adjudge—order & decree, that the said Jos. P. Gay receive of the Clerk of this Court & that the said Clerk deliver to him the bond of Mead Briggs, for four hundred and fifteen dollars—filed in the cause, & Collect the same with interest on the same, And out of the proceeds, pay the sum of Twenty Eight dollars & 30 cents

Pl. Tenors & Shivas &c.

vs. 2 Copy Decree.

Thos Green & Exor &c.

after giving at least 20 days Notice of Such Sale by advertisement at the Court house door of said County & at Smithfield (and in the "Christian Sun" a Newspaper published at Suffolk, On Six Months credit with interest from date, taking bond with good security for the Same, And return Said bond to Court with a report of his proceedings under this decree. (And the Court doth further adjudge order & decree that a Commissioner of this Court take the following accounts. 1st an account of the transactions of Josiah P. Gay Shff: & Committee of Thomas Green decd: 2d An account of the outstanding debts due by Thomas Green decd: & their dignity, including the plaintiffs demand, 3d An account of the heirs of Horatio Green decd. at the death of Thomas Green. (And that Notice of the taking of Such accounts, be published once a week for four Successive weeks in the "Southern Argus" A Newspaper published in Norfolk City, which Shall be equivalent to personal Service on the parties; And report to Court with any matter Specially Stated deemed pertinent by himself or that may be required by any party to be So Stated.

A Copy Teste. F. C. Latimer D.C.

At a Circuit Court continued & held for Isle of Wight County on the 17th day of May 1859.

David B Pastens and Albert G Shivers late Merchants & Partners under the Style of Pastens & Shivers. and Robert H Whitfield &c . . . . . Plffs:

against

Sarah Wrench Geny Goodson & Eliz: his wife, Jos. H. Gale, William Green, Josiah P. Gay Shff. & committee of the estate of Thomas Green decd. Sarah Green widow of Thos. Green decd. and Thomas Wilkerson . . . . Defts:

In Chancery.

This day Geny Goodson & Abram P. Norfleet & Sarah his wife filed their Answer and the plaintiffs: replication thereto. and this cause came on to be heard on the Bill of the Complainants. taken for confessed as to the defendants, except Geny Goodson and Abram P. Norfleet wife, exhibits filed with the said bill. was argued by Counsel: On Consideration whereof the Court doth decide that Thomas Green does not take under the will of Horatio Green decd: Neither a fee simple absolute, Nor an estate tail by implication in the land refered to in the Bill. But only a life estate therein with a contingent remainder to his Children if Any he Should have, the word "heirs": being in the opinion of the Court a word of purchase & Not of limitation, Meaning Children; with a limitation over by way of Executory devise or springing use to the other Children of Horatio Green the Testator in the event of the failure of Thomas Green to leave Children. And the Court doth adjudge order & decree that Josiah P. Gay Shff. of Isle of Wight County proceed to Sell the land of which Horatio Green decd died possessed, Lying in Said County and given as aforesaid by Horatio Green by his said will to Thomas Green for life; at Auction before the Court House door of said County On Some Court day,

Partnership

vs

Green

1859

May Court Decree

To be entered

R. H. Baker

giving at least twenty days notice of such sale by advertisement ~~&~~ at the Court House door of said County & at Smithfield and in the "Christian Sun" a newspaper published at Suffolk, on six months credit with interest from date, taking Bond with good security for the same and return the said Bond to Court with a report of this proceedings under this decree —

and the Court doth further adjudge order & decree that a Comr of this Court take the following accounts —

1st an account of the transactions of Jno. P. Gay Shff. & Comr of Thomas Green dec'd

2d. an account of the outstanding debts due by Thomas Green dec'd. and their dignity, including the plaintiffs' demands.

3d. an account of the heirs of Horatio Green dec'd. at the death of Thomas Green

and that notice of the taking of such accounts, be published once a week for four successive weeks in the "Southern Argus" a newspaper published in Norfolk City, which shall be equivalent to personal service on the parties and report to Court with any matters specially stated, deemed pertinent by him or that may be required by any party to be so stated.

Pastures &c.

vs.

Green &c.

This day George Goodson, and Abram P. Norfleet & Sarah A. Norfleet his wife, filed their answers & the Plts: replication thereto, and this cause came on to be heard on the Bill of the Complts: taken for confessed as to the defendants (except Geo. Goodson & Abram P. Norfleet & wife) exhibits filed with the said bill & was argued by Counsel. On consideration whereof the Court doth decide that Thomas Green, does not take under the will of Horatio Green dec'd, neither a fee simple absolute, nor an estate Tail by implication, in the Land referred to in the Bill, but only a life estate therein, with a contingent remainder to his children if any he should have, the word "heirs" being in the opinion of the Court, a word of purchase, and not of limitation, meaning children) — with a limitation over by way of executory devise or springing use to the other children of Horatio Green the testator in the event of the failure of Thomas Green to have children — and the Court doth adjudge order & decree that Josiah P. Gay Sheriff of Isle of Wight County, proceed to see the Land of which Horatio Green dec'd. died possessed lying in the said County, ~~containing~~ ~~acres more or less adjoining the Lands of~~ and given by Horatio Green dec'd by his said will to Thomas Green as aforesaid for life at auction before the Court house door of said County on some Court day, after

Pasture to Shivers

to

Greenis Adams

Lease Oct. 69

to be entered

R. H. Baker

Paslean & Shivers & als:
vs.
Greens admor & als:

Decree.

This Cause came on again to be heard, on the papers formerly read, and Reports of Commissioner N. P. Young, made in pursuance of the Order of Josiah P. Gay entered at this the May Term 1859, to which no exceptions have been filed, & was argued by Counsel: On consideration whereof the Court confirming said Reports & do the adjudge, order & decree that Josiah P. Gay admr. of Thomas Green dec'd. out of the assets of the intestate in his hands to wit: the sum of $401:93 pay first the costs of this suit: and out of the balance, pay, pro rata, the several Creditors of the said Thomas Green dec'd. as per Report of the said Commissioner Young, appears to be due & owing by ~~the said report~~ Com. Young's Report aforesaid, and make Report to Court —

and the Court doth further adjudge order & decree that the said Josiah P. Gay receive of the Clerk of this Court & that the said Clerk deliver ~~unto~~ to him, the Bond of Merit Briggs for $415. filed in the cause & collect the same with Interest on the same & out of the proceeds pay the sum of $28:30 due the said Gay as appears by his report & the Balance pay as follows — One fifth to John R Kelly attorney for Sarah Wrench, one fifth to John R. Kelly attorney for George Gordon & Elizabeth his wife, one fifth to John R Kelly atty. for Mrs. Wilkinson: one fifth to John R. Kelly atty. for Wm Green & the one fifth due to Joseph D. Gale, and make a Deed to the said Merit Briggs the purchaser of the Land aforesaid Report & Court — to be retained by said S. P. Gay till the further order of Court

18

Pastures &c.

Precis adm

1860 Final
May Court } Decree

R. he entered.
R. H. Baker

Pastures & Shivers

v

Greens &c. &c.

This cause came on this day to be heard on the papers formerly read & on the Report of Jr. P. Gay, made pursuant to the decree of the 19th. day of Oct. 1859 to which there is no exception, & was argued by Counsel On consideration whereof the Court doth Confirm the said Report and doth adjudge order & decree that the proceedings had in this cause be confirmed & made final between the parties

Notes
Horatio Greenhalgh

In the case of Boykin &als: Creditors of Thomas Green, against Godbon, Sale &als: - The only point of interest, for discussion, or difficulty arises under the first Clause of Horatio Greens Will - Namely - what interest has Thomas Green in the land therein devised ?. Thomas Green has died, leaving a Widow, but leaving no Child, or Issue - That is to say he was married, but never had any Child, or Issue - but left brothers & sisters and the Children of deceased brothers & sisters -:

The first difficulty arises in giving a meaning to the term "Lawful Heir" - it will be said that the testator meant by "leaving a lawful heir", leaving a Child, or Issue, or heirs of his, (Thomas') body. This is probable, it may be so, but the question arises by what authority of Law, is such a change of Word to be made -. It is too well known, that in the construction of Wills, that fixed rules of construction oftentimes conflict with the deductions which the natural mind would draw from the language employed - this is so common, that it were needless to cite authorities. Issue - Issue is often to construed to mean "Children", & Vice Versa - but can it be so safely said, that the term "heir", or "lawful heir", can, by the rules of Law, be taken to mean "Child", or "Issue". Now it seems that the intention of the testator would be as effectually carried out, and less Violence done to the language of his will, and more in accordance with the Cases wherein the Courts have changed the "Words" or language of the will, to change the particle "And", into "Or"; so that the will would read, "and in the event of my son Thomas' Marrying, 'or' leaving a lawful heir" &c: and" Should he not marry, 'or' leave a lawful heir at his death" &c:. The effect of this would be to Vest the estate in fee, in his son Thomas, on his marrying: There is certainly more reason in this idea, than in the change of "lawful heir" into "Child", or "Children", or "Issue" - especially, of the Clause in which it is designed to enlarge the express life estate on the said Contingency, as compared with the Clause containing the event, or contingency, on which the limitation to his, (the testators heirs) depend. The testator says in the last mentioned Clause, "Should he not marry and leave a lawful heir at his death, I devise the land aforesaid to be equally divided among my heirs" &c: It is obvious, that he used the Copulative "and" in both Clauses, altho - and yet how could he have a lawful heir, if by that term, is

meant "child", or "issue", if he had not been married: We insist then, that the true construction of the will, requires that, in the clauses aforesaid, that the word "and", should be changed into, "Or" - and we refer, to 1st Jar: on Wills - P. 441 - to 457 -.

But Again, suppose the above change is not adopted - the result will be essentially the same - that is to say, the will created an estate tail, in Thomas Green, which was enlarged into an estate in fee - For we contend that this clause does not fall within the operation of the 26 sect. of Ch. 99 - 1 Rev. code; unless the forced construction of the word "lawful heir" is made to mean "child," or "issue": The testator may have so meant it; but he certainly left heirs, coming ~~in~~ within the phraseology used -. Thomas green left brothers, sisters & nephews and nieces who are as much his heirs, as issue would be -; and the effect of the said 26th section, was not to give any particular meaning to words employed, or to authorize the Courts to change words, or reason out what the testator meant by using this, or that term, but simply to add "living at his death"; that is, if any limitation depended on the dying of any person without "heirs," "issue" &c: it should be interpreted such as living at the time of the death of such person" &c: - So we contend that this section leaves the language descriptive of the kind of heir to be left unchanged -: and as the brother, or sister answers the term "lawful heir," and as Thomas Green had such, and as he therefore did marry and his did have lawful heir, the limitation over, to his, testators heirs is too remote and therefore void -

- If however the Court shall take a different view, from that maintained above, and determine that Thomas Green took only a life interest, then in accordance with such a determination, the interest of Green to be made liable to his debts will be ascertained by the number of children, or heirs of the testator, for we presume it will not be pretended that he had no interest whatever in the subject -

R. H. Whitfield
Atty for Plaintiff

Pasteur &c
v
Green

X

Ct. of Ap.
Cir. Ct.

Opinion
Feb. 1859.

The court is of opinion that the rule in Shelley's case is inapplicable to the devise in this: That Thomas Green thereby took neither a fee simple absolute, nor an estate tail by implication, but only a life estate, to confine him to which, was unquestionably the intention of the testator, with a contingent remainder to his children if any he should have (the word him being in the opinion of the court, a word of purchase, and not of limitation, meaning children) with a limitation over by way of executory devise or springing use, to the other children of Horatio Green the testator in the event of the failure of Thomas Green to leave children.

Which I believe to be the proper construction of the will of Horatio Green and the law of this case especially as the said Testator has died since the year 1819, when a very important change of the pre-existing law was made; and even if the will in this case had been made before 1819, under the authorities, and particularly the case of Foxwell v Braddock

1. Patton & Heath's Reports 250, the rule in this case it seems to me, would not be otherwise.

I consider Foxwell & Braddock a strong authority in this case, and as settling that upon the death of Thomas Green the entire real estate devised to him for life passed under the will of his father to the surviving children and heirs of the father.

The usual decree for the settlement of the account may be entered.

R. H. Baker

July 24th 1857.

but that almost any limitation is good—

The Testator seems to have had a wish to provide for his son & children, but that what Land he should give him, should not go to strangers were he disposed to sell it—.

The word "and" cannot be changed into "or" because that would make quite a different event to fix the title, from what the Testator thought proper to fix — the getting married did not necessarily cause such an heir (child) as contemplated (and if the Testator designed any such purpose it would have been sufficient to have said, "if he, should not marry then to others—

I think Thos. Greens death vested his estate in said Land as a Legatee — now who took the same on Thos. Greens death? — I contend that the heirs of Horatio Green living at Thomas Greens death & not those living at Horatio Greens death — for why give Thomas Green an interest when he must necessarily be dead!

When it clearly appears that it was the Testators intention to make a condition, that intent shall be carried into effect — 2 Fonas Eq 75 (new)

Legacies take effect when the person to whom given for life shall die & not at Testators death 2 mat. p. 31— hence this Land should go to H. Greens heirs living at Thos. Greens death not include Thos. Green at all.

John R Kilby
16 Feby 1859.

Pasteures vs. Green.

The original papers are not now sent as they are probably in the Judges possession and as the question raised is only one & that under 1st clause of Horatio Green's will, and can be duly considered by the papers now sent, to wit:

Copy of Bill
Copy of will
Ans. of Antient Scribe (to be filed.
W. Whitfield's notes
J. R. Kelly's do

The Law previous to 1819 would in many cases create or convert a devise into a fee, where now it will not— a number of such cases are named in 2 vol. Mat. Dig. sec. 10. page 31.

The will of Horatio Green, gives the land only for life to Thos. Green, and if he should marry and have a lawful heir (child) then to him & his heirs that is to Thos. Green's children — this is the meaning of the devise & must prevail — Thos. Green did marry but never had a child, so that the contingency provided for never took place, — the will says if he should not marry and leave a lawful heir at his death I devise the land aforesaid to be equally divided among my heirs" which means if Thos. Green should never marry, or if he should marry and have no child, then the land is to back to Horatio Green's heirs — clearly shewing his intention — & the intention must prevail unless some ~~stern~~ stern rule of Law compels a different construction

The Law 2 Mat. says. every limitation contingent upon the dying of any person, without heirs" &c. shall be good &c— Horation Green says if Thos. Green die "without heirs" then to others — It seems to me that there can scarcely now be an estate tail created at all

Horatio Greens

Will

A Copy

60

in cash to him and his heirs forever. 19th the balc. of my Estate of whatsoever kind - I give and bequeath to Elizabeth Goodson, Sally Wrench - Thomas Green and Sarah Jane Bullock to be equally divided among them and their heirs forever. And lastly I constitute and appoint my friend Joseph Gale my whole and sole executor to this my last will and testament. In witness whereof I have hereunto set My hand and Seal this 5th day of March 1842.

Horatio his + Green (Seal)
mark

In Isle of Wight County Court.
April 4th 1842. This last will and testament of Horatio Green dec'd. was proved by the oaths of A. P. Phillips and William Goodwin two of the subscribing witnesses thereto - and ordered to be recorded - and on the Motion of Joseph Gale the Ex'r therein named - who made oath according to law - And with Joseph B. Whitehead his Security who justified on oath - entered into and acknowledged a bond in the penalty of $1400: condition as the law directs - Certificate is granted him for obtaining a probat in due form.

Teste. A. P. Young c

A Copy
Teste. F. C. Latimer D.C.

In the Name of God amen; I Horatio Green of the County of Isle of Wight do Make and ordain this to be my last will and Testament in manner & form following — Viz.

First, I leave to my Son Thomas Green during his life — all the Land lying On the South Side of the road where I live, and in the event of my Son Thomas marrying and leaving a lawful heir, I then give the said land to him and his heirs forever. Should he not marry and leave a lawful heir at his death, I devise the land aforesaid to be equally divided among my heirs. Secondly I devise to my Grand Son Joseph Henry Cole all my land lying on the South side of the road where I live — it being the bal of Manor plantation — during his life — and if he Should arrive at lawful age — I Give the said land to my Grand Son Joseph Henry Cole and his heirs forever. (and in the event of his dying before he arrives at lawful age, I then give the said land to be equally divided among my heirs. Thirdly: I give to my Daughter Lilley Wrench the tract of land called "Jordans" to her and her heirs forever. Forthly. I Give and bequeath to my Grand Son William Green the Sum of ten Dollars to him and his heirs forever. Fifthly; I leave to my Grand Son John Thomas Wilkerson one hundred dollars — and if he Shall arrive at lawful age I give him the hundred Dollars. but in the event of his dying before he arrives to lawful age — My will and desire is that the aforesaid hundred dollars be equally divided among my heirs. Sixthly — I give & bequeath to My Grand Daughter Sarah Jane Bullock two negroes — Named Cudger — and Rachel and their future increase — to her and her heirs forever. — 7th, I give & bequeath to My daughter Elizabeth Godson One negro woman Named Judy with one hundred Dollars in cash — to her and her heirs forever — also one Mare and Fig — to her and her heirs forever. 9th I give and bequeath to my Son Thomas Green fifty dollars in

Sally Wrench, Thomas Green and Sarah Jane Bullock to be equally divided among. And their heirs forever. And lastly, I Constitute and appoint my friend Joseph H. Gale my whole and Sole Executor to this my last will and testament. In witness whereof I have hereunto set my hand and seal this 5th day of March 1842.

Witness
N. P. Phillips
Ann E. Goodson
Wm A. Goodson

Horatio his X mark Green (Seal)

In Isle of Wight County Court April 4. 1842. This last will and Testament of Horatio Green dcsd. was proved by the oaths of N. P. Phillips and Wm. Goodson two of the witnesses thereto, ordered to be recorded. And on the motion of Joseph Gale the Exor. therein named - who made oath according to law - and with Jos. B. Whitehead his Security who qualified on oath, entered into & acknowledged a bond in the penalty of four thousand dollars. Conditioned as the law directs, Certificate is granted him for obtaining a probat in due form of law.

Teste. N. P. Young cc

A Copy

Teste. W. C. Latimer D.C.

Horatio Green
Will

In the name of God Amen, I Horatio Green of the County of Isle of Wight do make and ordain this to be my last will and testament in manner & form following.
Viz: First. I leave to my Son Thomas Green during his life all the land lying on the North side of the road where I live, and in the event of my Son Thomas marrying and leaving a lawful heir, I then give the said land to him and his heirs forever. Should he not marry and leave a lawful heir at his death I devise the land aforesaid to be equally divided among my heirs. Secondly, I devise to my Grand Son Joseph Henry Gale, all my land lying on the South side of the road where I live, it being the bals. of Mannor plantation during his life, & if he should arrive to lawful age I give the said land to my grand son Joseph Henry Gale and his heirs forever. And in the event of his dying before he arrives to lawful age, I then give the said land to be equally divided among my heirs.
Thirdly: I give to my daughter Sally Wrench the tract called "Jordans" to her and her heirs forever.
Fourthly; I Give and bequeath to my grand son Wm. Green the sum of ten dollars to him & his heirs forever.
Fifthly; I Loan to my grand Son John Thomas Wilkinson One Hundred dollars, and if he should arrive at lawful age, I give him the hundred dollars but in the event of his death before he arrives at lawful age. My will and desire is that the aforesaid hundred dollars be equally divided among my heirs. Sixthly; I give and bequeath to my Grand daughter Sarah Jane Bullock two negroes named Cudger and Rachel and their future increase to her and her heirs forever.
Seventh: I Give and bequeath to my daughter Elizabeth Godson One negro woman named Judy together with one hundred dollars in Cash to her & her heirs forever, Also One mare and Gig to her and her heirs forever. 9th: I Give and bequeath to my Son Thomas Green fifty dollars in Cash to him and his heirs forever. 10th: The bals. of my Estate of whatever kind I give and bequeath to Elizabeth Godson

Parties Names
v
Names

Ex H^r Tho^s Green
acct
$20.82
"

Mr. Thomas Green
1856 To Pasteur & Shivers Dr.

Nov	15	To 1 pr Boys Shoes	1	19
"	"	" 1 3/4 yds Table Diaper @ 2/9	1	10
"	"	" 1 lb " Nails 5	"	05
Decr	8	" 1 7/8 yds Kersey @ 1/	"	31
"	18	" 1 Boys Cap 37½	"	38
"	"	" 1 lb Tobacco 31	"	31
"	"	" 5 1/4 yds Red Flannel @ 25	1	25
"	"	" 9 1/4 " Br Cotton @ 4½	"	38
"	22	" 9 1/4 " Calico @ 9	1	13.
"	"	" 1 Card Hooks 3	"	03
1857	"	" 2 1/2 yds Flannel @ 20	"	50
Jany	31	" 1 Axe 7/5	1	25
"	"	" 2 lb Br Sugar @ 9	"	25
Feby	10	" 1 pr Trace Chains 2/9	"	63
"	"	" 1 Plow Heel 3¼ lbs @ 5	"	16
"	16	" 1 Allen Plow No 19	3	50
Mar	10	" 1 Plow Point 20	"	20
"	"	" 1 ditto ditto 15	"	15
"	"	" 2 3/4 yds Cassimere @ 38	1	38
"	"	" Buttons & Braid for	"	07
Apl	27	" 2 1/2 yds Checks @ 1/5	"	63
4	"	" 4 " Farmers Drill @ 14	"	67
"	"	" 1 pr Shoes 75	"	75
		" 1 Hank Thread 4½	"	06
June	16	" 2 3/4 yds Fine Goods @ 1/	"	46
"	"	" 2 " Cotton Checks @ 9	"	25
"	"	" 1/2 " Linen @ 3/9	"	31
"	"	" 2 lb Sugar @ 9	"	25
"	18	" 8 yds Swiss Muslin @ 31	2	50
"	"	" 3/4 " Ble Cotton @ 8	"	06
"	"	" 2 1/2 " Edge @ 4½	"	15
"	"	" 1 pr Gloves 31	"	31
			$	20.82

Jany 15. 1858. Rec'd the sum of thirty one dollars & 25 Cts. interest here on from Geo. A. Atkinson trustee from proceeds of sale under trust sale made by him A. H. Whitfield

Thos. Green Jun
to
A. Hanna
Ads

On demand the first day of January 1861, but with Interest thereon from the 1st January 1857, I bind myself and heirs to pay to Robt H. Whitfield, the sum of five hundred dollars - being the last instalment of the price of the boat called "Gibbs" sold by the said Whitfield and conveyed to me by a deed of even date herewith - Witness my hand & seal this the Sixth day of February 1857 - (6th Feby. 1857)

Thomas Green (Seal)

Witness
Geo R Atkinson

Rec of Govr & Athenæum trustees. the
sum of thirty one dollars & 25 cents interest
remitted to 15 Jany 1818 — and the further
sum of two hundred & ninety four dollars
sixty eight cents — being proceeds of
sale of part of land & other property
late of Wm Gunter. after paying interest
on claims & costs, and taking out the
first two bonds — Jany 15 — 1818

N. Whitehead

On demand the first day of January 1860, but with interest from the 1st January 1857 - I bind myself and heirs to pay to Robt. H. Whitfield the sum of five hundred dollars ($500.00): it being the 3rd instalment of the price of the tract of land, called "Gibbs" sold by the said Whitfield & conveyed to me, by a deed of even date herewith. Witness my hand & seal this the Sixth day of February 1857.

(6th Feby. 1857)

Wm. Hinds Green (Seal)

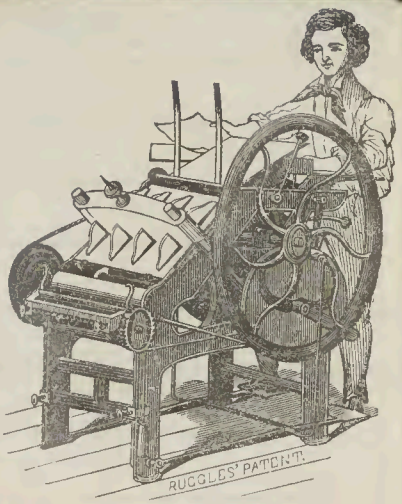
Wm. Hinds
Grat. Attorney

P. S. Not:

The cattle should be sent in Bill of Costs in cost of Pastures &c. H. Greens agmt &c &c - please take notice of it -

Yours &c

R. Hehirfield



Messrs. D. B. Paslew & T. G. Shivers Dr.

To The Southern Argus:

Southern Argus Building, Main Street, Corner Roanoke Avenue, NORFOLK, Va.

The Southern Argus

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1859
Sept. 3 - To Advtg Com'rs. Notice in Suit cir. co. Isle of Wight co.
2 3sq. 4 w. $15.=

COMMISSIONER'S OFFICE,
Isle of Wight Court House,
August 10th 1859.

TO DAVID B PASTEUR AND ALBERT G Shivers, late merchants and partners under the firm and style of Pasteur & Shivers, Robert H Whitfield, Sarah Wrench, George Goodson and Elizabeth his wife, Joseph H Gale, William Green, Josiah P Gay, Sheriff of Isle of Wght county and Committee of the estate of Thomas Green dec'd, Sarah A Green, widow of Thomas Green, dec'd, and Thomas Wilkerson.

You are hereby notified that in pursuance of a decree of the Circuit Court of the county of Isle of Wight, rendered on the 17th day of May, 1859, in a suit therein pending, in which you are the parties, plaintiffs and defendants, I have appointed the 15th day of September next, at my office at the Court house of Isle of Wight county, for taking the following accounts required by the said decree:

1st—An account of the transactions of Josiah P Gay, Sheriff and Committee of the estate of Thomas Green, deceased.

2d—An account of the outstanding debts due by, Thomas Green, dec'd and their dignity.

3d—An account of the heirs of Horatio Green, dec'd at the death of Thomas Green.

At which time and place you are required to attend.

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

se 3—s4w N P YOUNG.

Chge of Pubn $5.=

OFFICE OF THE SOUTHERN ARGUS,
NORFOLK, VA., 26 September 1859.

I Abram F Leonard one of the publishers of the Southern Argus, a newspaper published daily in the City of Norfolk, State of Virginia, do certify that the annexed Legal Notice in the case of Pasteur & Shivers &c.

pending in the Circuit Court of the County of Isle of Wight has been published once a week for four successive weeks in the said newspaper, commencing on the 3rd day of September 1859.

A. F. Leonard.