

1925-007

Nansemond Co (Suffolk) Chancery Causes: J.M. Darden vs Janie H. Phillips et al

Hathaway, Fulghum, Martin, Adams, Bunting, Fieldheim

J. M. Darden COMPLAINANT

vs. IN CHANCERY

Janie H. Phillips, Louise Phillips Hathaway,
and Harold Grant Hathaway in his own right
and Trustee of Edwin Phillips Hathaway, and
Edwin Phillips Hathaway, the last named being
an infant under the age of twenty-one years.....DEFENDANTS

Issue summons returnable to Second April Rules.

L. P. Holland
Attorney

E. E. L. Holland p. q.

4-17-24 - Process issued returnable to Apr.
Rules, 2nd Monday, 1924

CHANCERY SUMMONS

The Commonwealth of Virginia.

TO THE SHERIFF OF NANSEMOND COUNTY--GREETING:

You are Hereby Commanded to Summon.... Janie H. Phillips, Louise Phillips
Hathaway, and Harold Grant Hathaway in his own right and Trustee of Edwin
Phillips Hathaway, and Edwin Phillips Hathaway, the last named being an infant
under the age of twenty-one years

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held
for the said Court, on the Third Monday in April, 1924, to answer a
Bill in Chancery, exhibited against them
in the said Court by J. M. Darden

And have then and there this summons.

Witness. G. E. Bunting, Clerk of our said Court, at his office, this 17th day of
April, 1924, in the 138th year of the Commonwealth

~~A Copy--Teste:~~

Clerk

Teste:

Clerk

Executed this _____ day of _____, 191____ by delivering a true copy of the with-
in process to _____

in person, in the County of Nansemond, State of Virginia.

Sheriff _____

ORIGINAL

E.B. & L.P. Holland,
-p. q.

J.M. Barden

vs. } In Chancery

Janie H. Phillips et als

19.24

April
Rules

Third
Monday.

NANSEMOND COUNTY COURT,

Process Book, No. _____

Page _____

April 23, 1924.

Full and sufficient service
of this summons is hereby ac-
cepted by me.

(1)

Harold Grant Hathaway

In my own right and as
Trustee of Edwin Phillips
Hathaway.

(2)

Louise P. Hathaway

(3)

G. A. Harris
Guardian ad litem of
Edwin Phillips Hathaway

(4)

Janie H. Phillips

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER.

J. M. Darden Complainant.
vs.

Junie E. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway, in his own right and
as trustee for Edwin Phillips Hathaway, and
Edwin Phillips Hathaway, the last named being
an infant under the age of twenty-one years Defendant.

This cause came this day to be again heard on the papers formerly read and on the report of Commissioner Bradford Kilby, dated the 10th day of July, 1924, and filed on the 10th day of July, 1924, to which report there is no exception, and was argued by counsel.

On consideration whereof, it being clearly shown from said report and the evidence returned therewith, that the interests of the infant defendant will be promoted by a sale of the real estate in the bill and proceedings mentioned to J.M.Darden for the price of \$5,000.00, the offer of the said J.M.Darden to this effect, in writing, being filed along with said report, and a re-investment of the proceeds thereof in other property, pursuant to and under the terms of the will of the late C.C.Phillips, and the Court being of the opinion that the rights of no person will be violated thereby, the Court doth approve and confirm said report and doth adjudge, order and decree that E.T.Holland, who is hereby appointed a special commissioner for the purpose, when and as soon as the said J.M.Darden shall have paid the purchase price, do proceed to give him a good and sufficient deed for the said property.

And, it appearing to the Court, from the ^{receipt} filed

this day and marked exhibit "H.P. et al."
herewith, ~~and asked to be read as a part of this decree,~~ that

J. M. Darden has paid to Janie H. Phillips, the life tenant of the estate of C. C. Phillips, deceased, acting with Harold Grant Hathaway, Executor, to Harold Grant Hathaway, as trustee for Edwin Phillips Hathaway, and the Executor of the estate of C. C. Phillips, deceased, acting with Janie H. Phillips, and to Louise Phillips Hathaway, jointly, the sum of \$5830.25, being the amount of the purchase price of this property, less the costs of court and fee of counsel for services rendered, the Court doth order, adjudge and decree that when and as soon as the said L.P.Holland, Special Commissioner, shall have obtained a receipt in full from Janie H. Phillips, as life tenant of the estate of C. C. Phillips, deceased, for the sum of \$3718.88, the value of her life estate in the selling price of said property, and from Louise Phillips Hathaway a receipt for \$1401.42, the value of her life estate in one-half of the selling price of said property, subject to the life estate of her mother, Janie H. Phillips, both calculated according to the code in such cases made and provided, and a receipt from Harold Grant Hathaway, as trustee of Edwin Phillips Hathaway, for the sum of \$709.95, then he, the said Special Commissioner, shall execute a good and sufficient deed to J.M.Darden for the property in the bill and proceedings mentioned for the consideration above referred to.

But the said deed shall not be given and executed until the said Harold Grant Hathaway, trustee of Edwin Phillips Hathaway, shall enter into a bond, with good and sufficient surety, in the amount of \$1500, for the performance of his trust as fully described in the will of C.C.Phillips, deceased.

And the said Commissioner is directed to report his proceedings hereunder to the Court, and this cause is continued.

J. M. Darden

vs.

Janie H. Phillips and others

DECREE

Entered this 28 day of *Feb*
1925.

James McImore

5-7p, 52B

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

J. M. Darden.....Complainant.

vs.

Janie H. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway, in his own right and
as trustee for Edwin Phillips Hathaway, and
Edwin Phillips Hathaway, the last named being
an infant under the age of twenty-one years..... Defendants.

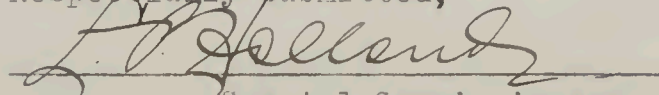
Your Commissioner, L. P. Holland, who was appointed as Special Commissioner in this cause, under decree entered therein on the 28th day of February, 1925, respectfully reports that he has obtained a receipt in full from Janie H. Phillips, as life tenant of the estate of C.C. Phillips, deceased, for the sum of \$3718.88, the value of her life estate in the selling price of the property in the bill and proceedings mentioned, that he has obtained from Louise Phillips Hathaway a receipt for \$1401.42, the value of her life estate in one-half of the selling price of the said property, subject to the life estate of her mother, Janie H. Phillips, in said property and under said will, both calculated according to the Code of Virginia in such cases made and provided, and that he has obtained a receipt from Harold Grant Hathaway, Trustee for Edwin Phillips Hathaway, for the sum of \$709.95, the remainderman under said will, which receipts are marked "Exhibits A, B and C", respectively, and filed herewith as a part of this report.

Your Commissioner further reports that Harold Grant Hathaway, Trustee for Edwin Phillips Hathaway, has entered into a bond, with good and sufficient surety, in the amount of \$1500.00, for the performance of his trust as fully described in the will of the said C.C. Phillips, deceased, with Louise P. Phillips as his surety, which bond is marked "Exhibit D" and filed herewith as a part of this report.

Your Commissioner further reports that after obtaining said receipts and bond, pursuant to the said decree entered on the 28th day of February, 1925, there was given to J.M.Darden, the purchaser of the property fully described in the bill and proceedings mentioned, a good and sufficient deed for same, with Special Warranty.

Your Commissioner further reports that he has paid the costs of this suit to the Clerk of the Court, amounting to \$57.40, and that he has paid the fee of counsel, amounting to \$112.35, receipts for which, marked "Exhibits E and F", respectively, are filed herewith as a part of this report.

Respectfully submitted,


Special Commissioner.

J. M. Darden

vs.

Janie H. Phillips et als.

Report

Filed this day of
March, 1925.

1925 April 17... filed.
J.L.M.

Exhibit "A"

Received of L. P. Holland, Special Commissioner, the sum of \$3718.88, in full settlement, satisfaction and discharge of my share of the proceeds of the sale of the property known as the Bleakhorn Camp property, as life tenant of the estate of C. C. Phillips, deceased.

X Janie H Phillips

Exhibit "B."

Received of L. P. Holland, Special Commissioner, the sum of \$1401.42, in full settlement, satisfaction and discharge of my share of the proceeds of the sale of the property known as the Bleakhorn Camp property, as ^{Remainderman} ~~life tenant~~ of one-half of the estate of C. C. Phillips, deceased, subject to the life tenancy of my mother, Janie H. Phillips.

Louis P. Holladay

Exhibit "C."

Received of L. P. Holland, Special Commissioner, the sum of \$709.95, in full settlement, satisfaction and discharge of my share of the proceeds of the sale of the property known as the Bleakhorn Camp property, as trustee of Edwin Phillips Hathaway, under the will of C. C. Phillips deceased.

Harold Hathaway

Exhibit "D."

Know All Men by These Presents, That we, *Harold Grant Hathaway and Louis P. Hathaway*

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of *Fifteen Hundred* Dollars to the payment whereof, well and truly to be made to the Commonwealth of Virginia, we bind ourselves, our heirs; executors, and administrators, jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of the office, post or trusts herein mentioned, with coupons detached from bonds of said State.

Sealed with our seals, and dated this *24th* day of *Mar* in the year of our Lord one thousand nine hundred and *twenty-five*, and in the *1925* year of the Commonwealth.

In Testimony Whereof, the said..... has hereto set his hand and seal, and the said..... has caused its corporate name to be hereto signed and its corporate seal to be hereto affixed, this..... day of..... in the year of our Lord one thousand nine hundred and....., and in the..... year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound *Harold Grant Hathaway, Trustee of Edwin Phillips Hathaway, an infant, shall perform his trust as fully described in the will of E. G. Phillips, deceased*

Now if the said Harold Grant Hathaway, Trustee shall faithfully perform the duties of said office, post or trust then the above obligation to be void or else to remain in full force and virtue

Harold Grant Hathaway (Seal)
Louis P. Hathaway (Seal)
..... (Seal)
..... (Seal)
..... (Seal)

VIRGINIA:

In the Clerk's Office of the Circuit Court of the County of Nansemond, on the *24th* day of *March*, 192*5*.

The above bond was executed and acknowledged before me by the obligors to the same (the security *affirmed* justifying), and ordered to be recorded.

Teste:

W. B. Ombry Clerk

To }

The Commonwealth

Bond Book #10

Fig. 13

Exhibit "E"

R. P. Holland p. q.

Copy of Costs

Taxed in the Suit of:

J. W. Varden

vs.

James H. Phillips, et al

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA

Writ Tax

1 50

Clerk

10 80

Sheriff (*services accepted*)

Attorney

15 00

Commissioner

30 00

Printer, for Order of Publication, etc-

Deposit Apr. 7, 1924

\$ 2.50

57.40

Date of Judgment or Final Decree

192

Paid

Mar. 30,

1925

H. E. Dumbrey

Clerk

Exhibit "G."

Received of L. P. Holland, Special Commissioner, the sum
of \$112.35 in full settlement, satisfaction and discharge
of fee in the matter of J. M. Darden vs. Janie H. Phillips
and others.

L. P. Holland Atty.

SUFFOLK, Virginia, *July 28th 1923*

On demand after date I promise to pay to J. M. Darden
the sum of *5830 25'* Dollars,
without interest, in the event that the terms of a certain
contract, a copy of which is hereto annexed and made a part
hereof, shall be rendered incapable of performance by the in-
ability of the parties thereto to obtain the decree or order
set forth in the said contract.

Janie H Phillips

Louise Hattaway

July 28th - 1923 -

In consideration of the sum of 5830 25⁻ dollars, receipt of which is hereby acknowledged, the undersigned, Janie H. Phillips, Louise Hathaway and Harold G. Hathaway, trustee for Edwin Phillips Hathaway under the will of C. C. Phillips, deceased, representing all the interest vested and contingent of the heirs of C. C. Phillips in that parcel of land with the building and appurtenances thereon known as CAMP BLEAKHORN and situated in the County of Nansemond, State of Virginia, do hereby promise that they will jointly and severally take whatever action may be necessary to institute the proper legal proceeding necessary to obtain an order or decree of the Circuit Court of Nansemond County to convey the interest of the said Janie H. Phillips, Louise Hathaway and Edwin Phillips Hathaway to J. M. Darden of the City of Suffolk, State of Virginia.

This contract shall inure to and be binding upon the heirs, personal representatives and assigns of the parties hereto.

Witness the following signatures and seals:

Janie H. Phillips (SEAL)

Louise Hathaway (SEAL)

Harold G. Hathaway (SEAL)

Trustee for Edwin Phillips Hathaway
Under the will of C. C. Phillips
Deceased -

Sands & Company

J. M. DARDEN,
~~President~~
SUFFOLK, VA.

INCORPORATED.

SUBJECT:

May 14th, 1923.

J. M. Darden,

In account with

C. C. Phillips.

To check for 1/3 purchase price of land - - - - -	500.00
June 19/21, To check deposited - - - - -	150.00
Aug. 12/21, To check deposited - - - - -	1,350.00
Oct. 12/21, To check deposited - - - - -	2,000.00
Aug. 5/22, To check deposited - - - - -	500.00
Aug. 15/22, To check for 1/2 interest of C.R. Fulgham - - -	326.75

Total - - - - - \$4,826.75

Oct 12 check to pay for Adams Plow 1,003.50
\$5,830.25

paid
July 30/23

Janice H. Phillips

Exhibit "JHPetals"

1925 Feb. 28. Filed
Jm

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

J. M. Darden..... COMPLAINANT

vs.

Janie H. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway in his own right and
trustee of Edwin Phillips Hathaway, and Edwin
Phillips Hathaway, the last named being an
infant under the age of twenty-one years..... DEFENDANTS

This cause, by the consent previously entered of record of complainant by counsel, and of the said infant defendant by G. A. Harris, his guardian ad litem duly appointed at rules, and Janie H. Phillips, Louise Phillips Hathaway and Harold Grant Hathaway in proper person came on this day to be heard on the bill of the complaint, the answer of the said infant defendant and of the said guardian ad litem, duly appointed at rules to defend the interests of the said infant defendant, the answer of Janie H. Phillips, Louise Phillips Hathaway and Harold Grant Hathaway in his own right and as trustee of Edwin Phillips Hathaway, and the general replication of the complainant to said answers, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that this cause be referred to one of the commissioners of this court, who is directed to inquire into and report to the court as follows:

First. Whether the real estate in the bill mentioned can be conveniently divided in kind among the several parties entitled to share therein.

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

Third. If the same cannot be conveniently divided in kind, and if no party will take the entire property and pay therefor to the estate, whether the interests of those who are entitled to the said property, or its proceeds, will be promoted by a sale of the entire property and investment of the proceeds of sale in other property or by an allotment of part and sale of the residue and the proportionate reinvestment of the said residue in other property.

Fourth. Whether it will be to the interest of all the defendants to this cause that the offer of the complainant set forth in the bill be accepted and especially whether it will be to the interest of the infant defendant.

Fifth. Whether there are any delinquent or unpaid taxes on said property.

Which several inquiries the said commissioner shall make after having given notice of the time and place thereof to all parties, or their counsel, and report same to the court, along with any matter specifically stated being deemed pertinent by him or required by any party to be so stated.

J. M. DARDEN

vs.

JANIE H. PHILLIPS AND OTHERS

DECREE

Entered this 27. day of
May, 1924.

J. L. McNamee

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

J. M. Darden COMPLAINANT

vs.

Janie H. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway in his own right and
as trustee of Edwin Phillips Hathaway, and
Edwin Phillips Hathaway, the last named be-
ing an infant under the age of twenty-one
years.....DEFENDANTS

We hereby consent that this cause may be sub-
mitted to the Judge of this Court for such decisions or
decrees therein in vacation as might be entered in term.

Janie H Phillips
Louise Phillips Hathaway
Harold Grant Hathaway
in his own right and as trustee
of Edwin Phillips Hathaway.
G. H. Harris
Guardian ad litem of Edwin
Phillips Hathaway.

With the consent of the parties, entered of record,
it is ordered that this cause be submitted to the Judge of
this court for such decisions or decrees therein in vacation
as might be made in term.

J. M. DARDEN

vs.

JANIE H. PHILLIPS ET AL.

DECREE

Entered this 27 day of
May, 1924.

J. M. Darden

To J. M. Darden

and

Janie H. Phillips, Louise Phillips Hathaway, Harold Grant Hathaway in his own right and trustee of Edwin Phillips Hathaway, and Edwin Phillips Hathaway, infant under 21 years of age, and G. A. Harris Guardian ad Litem of said infant defendant.

You are hereby notified that on the 12th day of June 1924, at the office of L.P. Holland in the National Bank of Suffolk, Suffolk Virginia, between the hours of 10 A.M. and 5 P.M., at which time and place you are required to attend, I shall take, state and settle the following accounts which are to be taken, stated, settled and reported to Court in pursuance of the decree of the Circuit Court of Nansemond County, Virginia, rendered on the 27th. day of May 1924, in the suit in chancery pending in said court to which you are parties plaintiff and defendant, to-wit:

(1) Whether the real estate in the bill mentioned can be conveniently divided in kind among the several parties entitled to share therein.

(2) If same can not be divided in kind whether any party will take the entire property and pay therefor to the other parties such sums of money as their interest therein may entitle them to.

(3) If the same can not be conveniently divided in kind and if no party will take the entire property and pay therefor to the estate, whether the interests of those who are entitled to the said property or its proceeds, will be promoted by a sale of the entire property and investment of proceeds of sale in other property or by an allotment of part and sale of the residue and the proportionate re-investment of the said residue in other property.

(4) Whether it will be to the interests of all the defendants to this cause that the offer of the complainant set forth in the bill be accepted and especially whether it will be to the interest of the infant defendant.

(5) Whether there are any delinquent or unpaid taxes on said property.

(6) Any matter specifically stated being deemed pertinent by the commissioner or required by any party to be so stated.

Given under my hand as Commissioner in Chancery of said Court this 30th. day of May 1924.

Bradford Kilby
Commissioner in Chancery.

June 10th, 1924.

Sufficient and legal service of the within notice is hereby accepted
by us.

Jamie H Phillips

Louise P. Hathaway

Harold P. Hathaway

(In his own right and as
guardian for Edwin Phillips
Hathaway)

G. A. Jarvis
Guardian Ad Litem.

J. M. Larden
Phy L. Holland
Attorney -

In the Circuit Court for the County of Nansemond:

V.

In Chancery.

Suffolk, Va. July 10, 1924.

In pursuance of the decree of the Circuit Court for the County of Mansemond entered on the 27th. day of May 1924 in the suit in chancery pending in said court between J. M. Darden, Complainant, and Janie H. Phillips and others, Defendants, the undersigned, Bradford Kilby, one of the Commissioners in Chancery for said Court, respectfully report as follows:

That on the 30th. day of May 1924, your commissioner gave notice to the parties to said suit that he would proceed on the 12th. day of June 1924, at the office of L. P. Holland in the National Bank of Suffolk, Building in Suffolk, Va. between the hours of 10 A.M. and 5 P.M. to make the several inquiries required by said decree to be made by one of the Commissioners in Chancery of said court.

That sufficient and legal service of the said notice was duly accepted by the parties to said suit as will appear by the endorsements on said notice herewith returned.

That on said June 12th.1924 at the office of L.P.Holland between the hours of 10 A.M. and 5 P.M. your commissioner took the depositions of C. R. Fulgham and George E. Bunting touching said inquiries which depositions are herewith returned as a part of this report.

That from the testimony of said witnesses and from information otherwise obtained, your commissioner reports as follows:

(1)

The real estate in the bill mentioned can not be conveniently divided in kind among the several parties entitled to share therein, it being a club-house built for pleasure purposes and ground appurtenant thereto being small in acreage much of which is marsh land.

(2)

J. M. Darden will take the entire property and pay therefor to the other parties such sums of money as their interests therein may entitle them to.

(3)

The interests of those who are entitled to the said property or its proceeds will not be promoted by a sale of the entire property and investment of the proceeds of sale in other property nor by an allotment of part and sale of the residue and a proportionate re-investment of the said residue in other property. Neither of these methods of disposition of this property would be advantageous to the parties interested, especially the infants, because of the peculiar nature of the property.

(4)

It will be to the interest of all the defendants to this cause that the offer of J. M. Darden of \$6.000. for the half interest in said property belonging to said defendants be accepted, and it will be especially advantageous to the infants. This property produces no income whatever and being a pleasure club-house is expensive to keep in repair and proper condition. The offer of J. M. Darden is about one-half of what ~~the~~ was the original cost of the property with its improvements, and is a far better offer than could ever be expected to be received from the general public to whom property of this kind would not appeal. The general market value of the entire property has been estimated to be from \$6.000. to \$7.000. by two witnesses who are good judges of real estate and are well acquainted with this property. The offer of J. M. Darden for the one-half interest of the defendants is practically as much as

these two witnesses estimate the entire property to be worth.

(5)

There are no delinquent taxes or unpaid taxes on said property, up to the current year 1924.

(6)

There is no matter specifically stated being deemed pertinent by your commissioner or required by any party to be so stated, except that G. A. Harris, Guardian ad Litem of the infant defendant, was present during the taking of the depositions herewith returned, and that offer of J. M. Darden in writing is hereto attached marked Exhibit "H"

Respectfully submitted this 10th. day of July 1924.

Bradford Kilby
Commissioner in Chancery.

Comr's fee \$ 30.

To whom it may concern:

J. M. Darden

vs.

Janie H. Phillips and others (Widow and heirs of C.C. Phillips)

I wish to make an offer of \$6,000.00 for the half interest owned by the late C. C. Phillips in the property in the above bill and proceedings fully described.

J. M. Darden

Exhibit "A"

G. E. Bunting, being duly sworn, deposes and says as follows:

Q. What is your name, age, occupation and place of residence?

A. G. E. Bunting; age, 52 years; Clerk of the Circuit of Nansemond County; Nansemond County.

Q. Are you familiar with the property in the bill and proceedings mentioned?

A. I am.

Q. What would you consider a fair valuation for this property as it now stands?

A. \$6,000.00, although I don't think it would bring that under the hammer.

Q. Do you think that this property could be conveniently divided in kind?

A. I do not think so, because it is used as a club-house and the artesian well is the most valuable part of the property.

Q. There are only about nine (9) acres in the property, while the club-house cost, approximately, \$10,000.00. Do you think that it would be to the interest of the infant defendant in this cause that the share of C.C. Phillips in this property be sold?

A. I do, for the reason that there is no income from the property now and the property will depreciate in value unless some money is spent to keep it up.

Q. Mr. J. M. Darden has offered \$6,000.00 for the interest of the estate of C.C. Phillips in this property. Would you consider this to be a fair valuation for this interest in the property, and do you consider that it would be to the interest of the infant defendant and the other parties in interest in this suit that this offer be accepted?

A. I consider it a fair price and would unqualifiedly say that this was a very liberal offer for this one-half interest.

And further this deponent sayeth not.

C. R. Fulghum, being duly sworn, deposes and says as follows:

Q. What is your name, age, occupation and place of residence?

A. C. R. Fulghum; age, legal; Treasurer of Nansemond County; Nansemond County.

Q. Do you know the parties to this suit?

A. I do.

Q. Are you familiar with the property in the bill and proceedings mentioned?

A. Yes, I am.

Q. What would you consider a fair valuation for this property, together with the buildings thereon?

A. I should think it would be worth about \$7,000.00. As this is club property and used merely for pleasure, I think it would be hard to obtain even this amount for it, unless somebody could be found who wanted it for that purpose.

Q. Do you think that it would be to the advantage of the infant defendant in this cause that the share formerly owned by C. C. Phillips be sold?

A. Yes.

Q. Do you think that this property could be conveniently divided in kind?

A. I do not, because the most valuable part of this property is the club-house erected thereon and this, of course, could not be divided to advantage.

Q. Mr. J. M. Darden has offered \$6,000.00 to the defendants in this cause for their interest in this property. Do you, or do you not consider this a fair and reasonable offer for the interest of the defendants?

A. I think it is a very liberal offer.

Q. Why do you think it would be to the best interest of the infant defendant to accept this offer of \$6,000.00 made by J. M. Darden?

A. First, because that is all it could be worth. Secondly, it is subject to constant wear and tear and will, therefore, need an outlay of money each year to keep it up, while it brings no revenue, whatever. The money derived from the sale of this property could be invested and bring an income. Besides, if the property were sold and the money invested, there would have to be no outlay for up-keep.

And further this deponent sayeth not.

In the Circuit Court of Nan-
semond County, Virginia.

J. M. Darden

v.

Janie H. Phillips et als.

COMMISSIONER'S REPORT.

Report of Bradford Kilby
Commissioner in Chancery,
under decree of 27th. day
of May 1924.

Filed July 10, 1924.

W. B. Dunning
Clerk.

BRADFORD KILBY
ATTORNEY AT LAW
SUFFOLK, VA.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

J. M. Darden.....Complainant.

vs.

Janie H. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway, in his own right and
as trustee for Edwin Phillips Hathaway, and
Edwin Phillips Hathaway, the last named being
an infant under the age of twenty-one years..... Defendant.

This cause came on this day to be again heard on the papers formerly read and on the report of L.P.Holland, Special Commissioner, dated the 17th day of April, 1925, and filed herein on the 17 day of April, 1925, to which report there is no exception, and was argued by counsel.

On consideration whereof, it appearing to the court that Janie H. Phillips, Louise Phillips Hathaway and H.G.Hathaway, Trustee of Edwin Phillips Hathaway, have given the receipts required in the decree entered in this cause on the 28th day of February, 1925, that H.G.Hathaway has given the bond required as Trustee of Edwin Phillips Hathaway for the performance of his trust under the will of C.C.Phillips, deceased, and that, pursuant to said order, the said Special Commissioner has given to J.M.Darden a good and sufficient deed, with Special Warranty, for the property in the bill and proceedings mentioned, the court doth approve and confirm said report, and this cause is continued. *is ordered removed from the docket, but to be reinstated upon motion, at any future time, should a further order or orders be necessary in reference to the trust fund.*

Enter April 17. 1925.
 Jas. L. McInnere.

5-536

DEGREE
ENTER THIS DAY OF
APRIL, 1925.

JANIE H. PHILLIPS ET ALs.

vs.

J. M. DARDEN

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

J. M. Darden COMPLAINANT

vs.

Janie H. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway in his own right and as
trustee of Edwin Phillips Hathaway, and Edwin
Phillips Hathaway, the last named being an
infant under the age of twenty-one years.....DEFENDANTS

The answer of Edwin Phillips Hathaway,
infant under the age of twenty-one
years, by G. A. Harris (a discreet and
competent attorney at law), his guardian
ad litem, assigned to defend his interest
in this suit, and the answer of the said
G. A. Harris, guardian ad litem of the
said infant defendant to a Bill of Complaint
exhibited against him and against Janie H.
Phillips, Louise Phillips Hathaway and
Harold Grant Hathaway in his own right
and as trustee of Edwin Phillips Hathaway
by J. M. Darden, in the Circuit Court of
the County of Nansemond, Virginia.

The answer of G. A. Harris, attorney at law, duly ap-
pointed at Rules guardian ad litem to the infant defendant,
Edwin Phillips Hathaway, and the answer of said infant defen-
dant by the said G. A. Harris, his guardian ad litem, to the
bill in equity exhibited against him in the Circuit Court of
the County of Nansemond by J. M. Darden.

For answer to the said bill the said guardian ad litem
answers and says that he does not know whether the interests
of the infant defendant would be promoted or not by the sale
or division of the property as prayed for in the said bill.

And the said infant defendant, by his guardian ad
litem, answers and says that being an infant of tender years,
he does not know whether it will be best to have a sale of the
said property, but being an infant he commits the protection

And now, having answered, he prays to be hence dismissed, etc.

By E. Ashurst
Guardian ad litem

STATE OF VIRGINIA,)
) To wit:
City of Suffolk.)

Sworn to before me in my city aforesaid by G. A. Harris, Guardian ad litem for Edwin Phillips Hathaway, and Edwin Phillips Hathaway by G. A. Harris, Guardian ad litem, this the 27th day of May, 1, 1924.

My commission expires the 12th day of January, 1928.

J. M. DARDEN

vs.

JANIE H. PHILLIPS ET AL.

ANSWER OF

G. A. HARRIS, GUARDIAN
AD LITEM.

FILED THE 27th DAY OF
MAY, 1924.

G. A. Harris, Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

J. M. Darden COMPLAINANT

vs.

Janie H. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway is his own right and
as trustee of Edwin Phillips Hathaway, and
Edwin Phillips Hathaway, the last named being
an infant under the age of twenty-one years DEFENDANTS

The separate answer of Janie
H. Phillips, Louis Phillips
Hathaway, and Harold Grant
Hathaway in his own right
and as trustee of Edwin Phillips
Hathaway to a Bill in Equity ex-
hibited against them and other
in the Circuit Court of the City
of Suffolk, Virginia, by J. M.
Darden.

These respondents saving and reserving to them-
selves the benefit of all just exceptions to the said bill,
and for answer to the said bill say that they believe it will
be to their best interest and also to the best interest of
the infant defendant, that their joint share in the said proper-
ty be sold to J. M. Darden for the price mentioned in the bill
in this cause, and that they, therefore, concur in the prayer
of the said bill.

And, now, having fully answered, they pray to be
hence dismissed with their reasonable costs in this suit.

Janie H. Phillips
Louise Phillips Hathaway
Harold Grant Hathaway
in his own right and as trustee
of Edwin Phillips Hathaway.

STATE OF VIRGINIA,)
- To-wit:
CITY OF SUFFOLK)

I, Telza S. Miller, a Notary Public in and for the city aforesaid, do certify that Janie H. Phillips, Louise Phillips Hathaway and Harold Grant Hathaway, in his own right and as trustee of Edwin Phillips Hathaway, defendants in the above suit, this day personally came before me in my city aforesaid and made oath as to the correctness of the several statements made in the foregoing writing.

Given under my hand and seal this 17th day of May, 1924.

Telza S. Miller
Notary Public.

My commission expires the 12th day of January, 1928.

J. M. DARDEN
vs.
JANIE H. PHILLIPS ET AL..

The separate answer of Janie H. Phillips, Louise Phillips Hathaway and Harold Grant Hathaway, in his own right and as trustee of Edwin Phillips Hathaway.

Filed the 20th
day of May, 1924.
J. E. & L. P. Holland

E. E. & L. P. HOLLAND
SUFFOLK, VA.

J. M. Darden COMPLAINANT

vs. BILL

Janie H. Phillips, Louise Phillips Hathaway,
Harold Grant Hathaway in his own right and as
trustee of Edwin Phillips Hathaway, and Edwin
Phillips Hathaway, the last named being an
infant under the age of twenty-one years.....DEFENDANTS

TO THE HONORABLE JAMES L. MCLEMORE, JUDGE OF THE CIRCUIT
COURT OF NANSEMOND COUNTY:

Your complainant, J. M. Darden, respectfully represents:

(1) That during the life time of C. C. Phillips he was
seized and possessed jointly with C. C. Phillips of the follow-
ing real estate, lying in the County of Nansemond:

1. "All that certain tract or parcel of land and all appur-
tenances thereunto attached, situated in Lower Chuckatuck
Magisterial District, Barrett's Neck, Nansemond County,
State of Virginia, containing five (5) acres, more or less,
and bounded and described as follows:

On the North by the lands known as the "Osborn farm"
running along this farm to the center of a ravine or branch,
on the East by the Nansemond River, on the South by the
lands of C. G. Adams, on the West by the lands of Emma
Martin, widow. This tract or parcel of land was purchased
by the said J. W. Martin from Caleb Martin, deceased, as
shown by deed recorded in the Clerk's Office of Suffolk,
Virginia.

Said tract of land being further described as follows:

Beginning at low water mark and running thence up the
river bank to a certain gum tree in the branch where said
land joins the land known as the "Osborn farm" and again
beginning at low water mark and running thence up the
river bank to a certain stob where said land joins the
land of C. G. Adams, thus transferring to the parties of the
second part all riparian rights of said property. Other
corner land marks of said property are where said land joins
the lands of the widow E. E. Martin, a certain marked stob,
from said stob along the lands of the widow E. E. Martin to
a group of pines.

This is the same tract of land conveyed to J. M. Darden,
C. R. Fulgham and C. C. Phillips by J. W. Martin and Sallie
E. Martin, his wife, by deed dated September 7, 1920, and
duly recorded in Nansemond County Clerk's Office on the 26th
day of October, 1920, in Deed Book 94, page 588, and in which
above described tract of land C. R. Fulgham and Ida E. Ful-
gham, his wife, conveyed their interest to J. M. Darden and
C. C. Phillips by deed dated August 12, 1922, and duly re-
corded in Nansemond County Clerk's Office on August 14, 1922,
in Deed Book 100, page 95."

2. "All that certain piece or parcel of land and all appur-
tenances thereunto attached in Barrett's Neck, Nansemond
County, Virginia, containing four and one-half (4½) acres,
more or less, bounded and described as follows:

On the North by the James River; on the East by the land formerly belonging to J. W. Martin; on the South by the lands of John Lee, deceased, on the West by the lands formerly belonging to J. W. Martin and W. T. Martin, deceased, this being the same land conveyed to said C. G. Adams by Joseph Edmunds and wife by deed dated January 17, 1917, and duly of record in the Clerk's Office of the Circuit Court of Nansemond County, in Deed Book 86, page 208; also the same land conveyed to said Joseph Edmunds and wife by Caleb A. Martin, deceased, and others, as shown by deeds duly of record in the Clerk's Office of the Circuit Court of Nansemond County, in Deed Book 47, page 7, and Deed Book 56, page 434, together with all riparian rights belonging to the said land to the filum aquae, or thread of the stream, together with reasonable use of said waters and being the same tract of land together with the appurtenances thereunto belonging conveyed to J. M. Darden and C. C. Phillips by C. G. Adams and Sarah Bush Adams, his wife, by deed dated September 16, 1921, and duly recorded in the Clerk's Office of the County of Nansemond on the 22nd day of September, 1921, in Deed Book 98, page 106."

and while so jointly seized and possessed with the said C. C. Phillips of the said real estate, the said C. C. Phillips, on or about the 7th day of March, 1923, died, leaving Janie H. Phillips as his widow, Louise Phillips Hathaway, his daughter, and Edwin Phillips Hathaway, his grandson as his only heirs-at-law, the last of whom is an infant under the age of twenty-one years.

(2) That the said C. C. Phillips left a will, which will was admitted to probate in Nansemond County Clerk's Office on March 10, 1923, and which will reads as follows:

" I, C. Crawley Phillips, of Nansemond County, Virginia, hereby revoking all former wills by me at any time made, do hereby make my last will and testament as follows:

FIRST: I direct that any debts that I may owe at the time of my death shall be paid as soon as practicable thereafter.

SECOND: I give, devise and bequeath to the Trustees of St. Johns Church, located near Chuckatuck, in Nansemond County, Virginia, the sum of FIVE HUNDRED (\$500.00) DOLLARS.

THIRD: I give, devise and bequeath to my wife, Janie H. Phillips, the sum of TEN THOUSAND (\$10,000.00) DOLLARS, to use and dispose of as she may desire,

FOURTH: All the rest and residue of my estate I give, devise and bequeath to my beloved wife, Janie H. Phillips, for and during the term of her natural life.

FIFTH: After the death of my wife, Janie H. Phillips, I give, devise and bequeath one-half of my entire estate to my grandson, Edwin Phillips Hathaway, and direct that his Trustee, hereinafter appointed, shall turn over to him no part of the principal of the said estate until he shall have attained the age of twenty-five years. I appoint my son-

in-law, Harold Grant Hathaway, as Trustee for my grandson, Edwin Phillips Hathaway, and direct that he shall turn over to my said grandson only the income from the one-half of my said estate until he shall have reached the above mentioned age, which said income shall be used for the education, maintenance and support of my said grandson, but I further instruct the Trustee of my said grandson that when my grandson shall reach the age of twenty-five years, that the entire one-half of my said estate shall be turned over to him to use and dispose of as he may deem best.

SIXTH: After the death of my said wife, Janie H. Phillips, I give, devise and bequeath the remaining one-half of my said estate to my daughter, Louise Phillips Hathaway, for and during the term of her natural life, and at her death, I give, devise and bequeath the said remaining one-half of my estate to any child or children, which she may hereafter have. If, however, she should have no further children, then, I give, devise and bequeath the said remaining one-half of my estate to my grandson, Edwin Phillips Hathaway.

SEVENTH: I give, devise and bequeath to my son-in-law, Harold Grant Hathaway, my diamond and emerald ring, with the request that he bequeath it to his oldest son, Edwin Phillips Hathaway, at his death, as it once belonged to Edwin Phillips Hathaway's great-grandfather.

EIGHTH: I appoint my wife, Janie H. Phillips, and my son-in-law, Harold Grant Hathaway, as joint executrix and executor, respectively, of this, my last will and testament, and direct that they may be allowed to qualify as such by giving bond without security.

Witness the following signature and seal this 23rd day of August, 1922.

C. C. PHILLIPS (SEAL)

Signed, sealed and acknowledged by C. Crawley Phillips, as and for his last will and testament, in our presence, who, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses.

H. M. HOLLAND
A. D. SHEFFIELD
THOMAS J. CAHOON "

(3) That C. R. Fulgham, J. M. Darden and C. C. Phillips bought the piece of property first above described for the sum of \$1500.00, and J. M. Darden and C. C. Phillips bought the piece of property second above described for \$2,000.00, and that the said C. C. Phillips and J. M. Darden paid the said C. R. Fulgham \$500.00 for his interest in the piece of property first above described, making an investment in the said real estate amounting to \$3500.00; that the said parties bought the

said property for the purpose of erecting thereon a pleasure club; that the said club was erected on the said property, which, together with furnishings, cost approximately EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500), and it has since been continually used for this purpose alone.

(4) That Janie H. Phillips and Louise Phillips Hathaway, as life tenants of C. C. Phillips, receive no revenue from the said property and are unwilling to continue to appropriate the necessary funds to maintain their one-half ($\frac{1}{2}$) interest in this club as a pleasure club during their entire lives, nor do they believe that it will be to the interest of Edwin Phillips Hathaway, infant defendant in this cause that they do so.

(5) That your complainant has accordingly offered them the sum of SIX THOUSAND DOLLARS (\$6000) for their interest in the said above mentioned property; that the said real estate is, as he believes, incapable of partition among the parties entitled thereto, and that the interest of those entitled to the said real estate or its proceeds, will be promoted by the sale of this property to him for the said price.

In consideration whereof, and forasmuch as your complainant is remediless in the premises save by the aid of a court of equity, he prays that the said Janie H. Phillips, Louise Phillips Hathaway, Harold Grant Hathaway in his own right and as trustee of Edwin Phillips Hathaway, and Edwin Phillips Hathaway may be made parties defendant to this bill and required to answer the same, the said adults in their own proper persons, and the infant by guardian ad litem; that a proper guardian ad litem be appointed in this cause for said infant, who shall also answer this bill; that proper process issue; that the said real estate may be divided between the

parties entitled thereto, or else, if it cannot be so devised it may be sold and the proceeds divided among the adult and infant parties according to their respective rights, the shares of the infant to be held as directed by statute for such cases made and provided; that all proper orders and decrees may be made, accounts taken, and inquiries directed; that the papers in this cause may be referred to one of the commissioners of this court, who shall especially ascertain and report whether or not it will be to the interest of all parties, and especially of the infant defendant to sell said property to said J. M. Darden at the price herein mentioned, if he shall also ascertain that said property can not be conveniently divided in kind; and that your complainant may have all such further and other and general relief in the premises as the nature of his case may require, or to equity may seem meet.

J. M. Darden
Complainant.

E. L. St. Bernard p. q.

STATE OF VIRGINIA,)
City of Suffolk,) To wit:

I, Paul Marshall, a notary public in and for the city aforesaid, do certify that J. M. Darden, the complainant in the above suit, this day personally came before me in my city aforesaid, and made oath that he believes the several statements made in the foregoing bill to be true.

Given under my hand this 23rd day of April, 1924.

Paul Marshall
NOTARY PUBLIC

com. of Nov. 24, 1927.

B I L L

J. M. Darden....Complainant

vs.

Janie H. Phillips,
Louise Phillips
Hathaway, Harold Grant
Hathaway in his own
right and as trustee
of Edwin Phillips
Hathaway, and Edwin
Phillips Hathaway, the
last named being an
infant under the age of
twenty-one years...Defendants

Filed the 21 day of April,
1924.

J. E. Darden
Clerk

E. E. & L. P. HOLLAND
SUFFOLK, VA.