

1834-019 SOUTHAMPTON COUNTY
CHANCERY PAPERS

GARDNER et ux VS. GARDNER & al

8/1834

Randolph N. Gardner Chy.

by 3 Bill Chy.

Geo. H. Gardner Val.

Hodgry

1824 May - Deere as filed &
 " Aug. Rpt. ret. & deere K

Doamp. Co. Co. Chy.

To the Worshipful the Justices of the County
Court of Southamptox, in chancery sitting. Humbly
comblaining, shew unto your Worships your orator
and oratrix Randolph R. Gardner & Phebe Gardners
his wife, That sometime about the month of
in the year 1832, Jeremiah Gardner of the said
county departed this life seized and possessed of
two tracts or parcels of land containing two hundred
and sixty one acres, situated in the said County,
and leaving a last will and testament, which
was subsequently duly recorded in the County Court
of the said County by the order therein appointed: an
attested copy of which said last will and testa-
ment is here referred to, marked A. and prayed
to be considered as a part of this bill. And your
orator ~~and~~ oratrix further shew that the said
Jeremiah Gardner, by his said last will and tes-
tament, devised all his real estate, together with
other property, to your oratrix, Then the wife of
the said Jeremiah Gardner, "during her natural
life or widowhood for the support of keeping
his children & other family together and to raise
& educate them; and after the death or marriage
of" his "wife", your oratrix, the said testator directs
that a division of the estate which he devised to
his wife should be made among his living chil-
dren. And your orator & oratrix further shew that
the said testator left at the time of his death
six infant children, that is to say, George D.
Gardner, Harriet M. Gardner, Isaac O. Gardner,
Elihu M. Gardner, Louisa F. Gardner & Margaret
A. Gardner, all of whom are still living and
infants. And your orator & oratrix further rep-
resent that after the death of the said Jeremiah
Gardner your oratrix, then his widow, entered upon
and possessed herself of all the property devised to

her by The said testator and held possession thereof until very recently, that is to say, sometime in the month of April in the year 1834, she intermarried with your orator; whereby, your orator & oratrix are advised, your oratrix has relinquished herself from retaining the possession of all the lands devised to her in the said last will & testament, but that she is entitled to her dower interest therein in the same manner as if she had never elected to take under the said last will & testament. And your orator & oratrix further represent that they have made frequent applications to the said children of the said Jeremiah Gardner to set apart and allot to your oratrix one third of the said real estate of which her late husband died seized & possessed as her dower interest in the same to which she is entitled by law; & your orator & oratrix well know that they would have complied therewith without suit. But now so it is, the said Geo. H. Gardner, Harriet M. Gardner, Isaac O. Gardner, Eli^a M. Gardner, Louisa F. Gardner & Margaret A. Gardner, have wholly refused to comply with such reasonable requests. In Tendu Consideration whereof, and for as much as your orator & oratrix are without remedy in the premises except by the assistance of a Court of Equity whose such matters are properly cognizable: To the end Therefore that the said George H. Gardner, Harriet M. Gardner, Isaac O. Gardner, Eli^a M. Gardner, Louisa F. Gardner & Margaret A. Gardner, who are prayed to be made parties hereto, by some person to be appointed their special guardian to defend them in this suit, may upon their several Corporal oaths then & perfect answer make to all and singular the premises herein mentioned, & that as fully & particularly as if the same were here again repeated & interrogated; that your Worship will

decree a partition of the said estate of which the said Jeremiah Gardner was seized, assigning to your oratrix one third part thereof; and that your orator & oratrix may have such other & further relief in the premises as they can may seem to require & to your worship shall seem meet. May it please
Jc

W^m D. Hodges h.g.

The Joint and separate answer of George H. Gardner, Harriet M. Gardner, Isaac O. Gardner, Eli^a M. Gardner, Louisa F. Gardner & Margaret A. Gardner, infant children of Jeremiah Gardner dec^d, by Silveston Moore their special guardian, to the bill of Complaint exhibited against them by Randolph R. Gardner & Phoebe his wife, Complainants - These defendants saving and reserving and reserving to themselves all exceptions to the said bill, for answer thereto, or to so much thereof as it is material for them to answer unto, they answer & say, that as far as they are advised the allegations charged in the said bill are substantially true & correct, & they are willing such a decree may be made by this worshipful Court as the Complainants desire, or as to the Court may seem proper under the circumstances of the case - And these respondents having answered & say they to be henceforth dismissed with their costs in this behalf sustained &c

Randolph R. Gardner & Phoebe } This cause came on this
George H. Gardner & al. } day to be heard by consent
of parties on the bill, answer & exhibit filed, and was argued by counsel, on consideration whereof the Court, being of opinion that the land in the bill mentioned is liable to division as there is set forth, doth adjudge, order & decree, that James T. Moore, Seth Davidson & Jesse Parker, who are hereby appointed commissioners for that purpose, any two of whom may act, do allot and set apart

to the complainant Phoebe Gardner, wife of the
Compt. Randolph R. Gardner, one full & equal
third part of the two tracts or parcels of land in
the said title mentioned, being the same whereby
the said Jeremiah Gardner died seized & possessed, to
be held by her as her dower therein; in the execu-
tion of which duty the said Commissioners, are autho-
rized, if needful, to take with them any competent
surveyor to assist them in making the said division,
and that they make report &c

Gardner's

as Geo. Deane

Gardner's

For Cunningham

Dorchester May Court 1834.

Randolph R Gardner and Phoebe Gardner his wife. *Plffs* } In Chancery
against

George A Gardner, Harriet M Gardner, Louisa T Gardner,
Isaac A Gardner, Eliza M Gardner, & Margaret A Gardner.
infant children of Jeremiah Gardner dec'd by Lillston Moore
their Special Guardian. *Defts*

This cause came on this day to be heard by consent of parties on the bill,
answer and exhibit filed and argument of Counsel. On consideration whereof the
Court, being of opinion that the land in the bill mentioned is liable to division as
therein set forth, doth adjudge, order and decree, that James T. Moore, Jephtha
Darden and Jesse Parker, who are hereby appointed Commissioners for that
purpose, any two of whom may act, do allot and set apart to the complainants
Phoebe Gardner, wife of the Complainant Randolph R Gardner one full and
equal third part of the two tracts or parcels of land in the said bill men-
tioned, being the same whereof the said Jeremiah Gardner died seized
and possessed, to be held by her as her dower therein: in the execution of which
duty the said Commissioners are authorized, if needful, to take with them any
competent Surveyor or to assist them in making the said division, and that they
make report of their proceedings therein, to Court in order to a final decree -

Attest Jests James Rockelle Clk

In obedience to an interlocutory decree, 'Gardner vs. Garner, pronounced by the County Court of Southampton at the May term 1834 and thereto annexed, your Commissioners having met, and viewed the premises, proceeded on Saturday the 21st day of June 1834, and set apart to the Complainant Phoebe Gardner one full and equal third part of the two tracts or parcels of land in the bill mentioned (as we adjudged) by the following metes and bounds: Beginning at the road leading from South Quay to Jerusalem in Jesse Parkers line, thence along the road N 42 W. 89 p. to a white oak thence still along the S. road N 55 W. 30 p. to Dixon Gardner's line, thence along his line S. 42 W. 40 p. to a small pine a corner, thence S 43 E. 95 poles to a pine in Jesse Parkers line aforesaid thence along said Parkers line N 75 E. 48 poles to the beginning: Containing thirty one acres including the orchard and all the buildings. and as there is but little woodland, within the limits of the decree, your Commissioners are of opinion that the said Phoebe Gardner should be privileged to procure rail. timber & fire wood from any part of the said tract out of which the decree is taken. All of which is submitted.

Given under our hands the 21st day of June
a. d. 1834.

James T. Moore
Jesse Parker

Jeremiah Gardner's

will

(at copy)

(A)

4643.94

I Jeremiah Gardner a native of the state of Virginia and an inhabitant of the County of Southampton in this state being weak in body, but of sound mind and memory do make and ordain this to be my last will and Testament in manner and form following Viz

First. It is my will and desire, that my executor herein after named, first pay and satisfy all my just debts -

Second. I leave the use of all my estate both real and personal to my beloved wife Phoebe during natural life or widowhood, for the purpose of keeping my children and other family together and raise and educate them - and after the death or marriage of my wife, it is my will and desire that a division of all my estate both real and personal be made among all my living children, share and share alike to them and to their heirs forever.

Third. I hereby nominate and appoint my beloved wife Phoebe & Littelton Moore my lawful executors of this my last will and Testament hereby revoking and annulling all other, or former wills and Testaments by me heretofore made. In Wt. of which I have hereunto set my hand and caused my Seal to be affixed the 23^d day of January in the year our Lord 1832

Signed sealed & acknowledged to be my last

will & Testament in presence of

Wm Jones

Arrest Edwards

Mary ^{her} Moore
mark

Jeremiah ^{his} Gardner (Seal)
mark

At a Court held for the County of Southampton the 20 day of February 1832. This last will and Testament of Jeremiah Gardner dec^d was proved by the oath of Arrest Edwards & Henry Moore two of the Justices of the Peace & ordered to be recorded. And the motion of Littelton Moore the Executor therein, (time being reserved for the Executor therein named to qualify) who made oath and together with Elisha Darden & Edward Crumpler his accountants entered into & took a Bond in the penalty of Three Thousand Dollars conditioned as the Law directs. Whereupon is granted the said Littelton Moore for obtaining a probate of said will in due form.

Teste James Rockwell Clk
Attest John James Rockwell Clk