

1840-012 SOUTHAMPTON COUNTY
CHANCERY PAPERS

GARDNER etal VS. GARDNER'S EXECUTOR etal
4/1840

other surnames: Daughty,
Daughtey, Daughtery,
Daughtrey

copy 1191

Gardner &c

"

Gardeners Court &c

} Bill &c

1836 Nov. Decree for decree filed &c

1837 Sept. Report ret^d &c

1840 Apr. Or: to deliver bond &c

Atkinson

To the County Court of Southampton villis in
Chy. Rembly complaining - Shew to the Court
from complainants Lemuel B Gardner
Milton B Gardner, Lemuel Vaughan &
Lemuel Daughtby the two last executors
of Miriah T Gardner dec'd: that some-
time since one Matthew Gardner
late of S^oampton County departed this life
having made his will which is of record in
the Co. Ct. of S^oampton (an attested copy of
which is herts annexed and referred to be
taken on part of this bill - whereby he gives
leaves to his wife, ~~but the one third part~~
~~of his estate except his negro and~~
Mary Gardner one third part of his estate
real and personal dec'd he ^{survive} wife, and
at the death or marriage of his wife
he desiring that the said third be divided
between all his children - one ~~and~~ Solomon
Daughtby who was executor appointed by
the will who qualified as such before the said
Court and has in his possession the slaves
&c. which are not repay to pay debts -
The said widow is dead - and one of
the children of the said Matthew Gardner
(to wit Miriah T Gardner is dead and
Lemuel Vaughan and Lemuel Daughtby are
his executors - The said Lemuel B Gardner
Milton B Gardner, Miriah T Gardner &
~~Margaret~~ Solomon Daughtby and Barbara
& Daughtby who was Barbara T Gardner
before her marriage, ~~was~~ were the persons
entitled to the said estate lent to the
widow aforesaid and the said Miriah
T Gardner this dec'd, his part of the estate
gave into the hands of his executors -
The testator Matthew Gardner left the follow-
ing slaves at his death, to wit, Jacob, Isaac,
Hannah, ~~John~~, ^{Joe} Sam, Robertson, and
~~John~~ then have him from the following persons

to wit, Fanny, Peter, Isaac, and Celia -
Evan and Jacob were sold by the son,
under the will of the testator. -
You complainants charge that as the said
Mary the widow is dead - the said
Levi and Nelson and the said son
of Levi R. Gardner are entitled to one
third part of all the slaves whomever the
said Matthew Gardner did sign and entitle
to, and they claim more to have the
right to such share of the estate - but so
it is, may it please the Court, the said
Solomon Daughtery as executor of the said
said Matthew ^{Gardner} ~~Daughtery~~ refuses to deliver out
them the said 1/3 of the slaves aforesaid,
all which is contrary to equity - in tender
consideration whereof, and for as much
as they are without remedy except in the
Court of Chancery, they pray that the
said Solomon Daughtery may be compelled
to answer this bill fully, and to answer
- only that he set out how many slaves
the said Matthew Gardner left, what is
the increase and what has become
of them, and that he shall account for
them to the complainants, and if
sold account for the value thereof.
That you will appoint special persons
to execute the order and make
a return order that one third part
of the slaves of the said Matthew Gardner
be set out, and that the said one third
part, then he divide into equal
shares, and allot 1/4 to Levi Gardner
1/4 to Nelson B. Gardner, ~~and~~ 1/4 to Levi
Vaughan and Levi Daughtery executors
of Levi ~~R. Gardner~~ Gardner, and the other
1/4 to Solomon Daughtery and Barbara

his wife - and ~~matrimony~~ ^{the same}
which may comport with equity to
Lemuel Daughtery
Attorneys
Samuel R. Gardner
Nelson B. Gardner

The answer of Solomon Daughtery and his wife
Barbara and of the said Solomon Daughtery
as executor of the said Matthew Gardner
to the bill of complaint exhibited against
them in &c. in the County Court by Levi
R. Gardner and others - Their defendants
for answer say - The said executor says that
the facts charged in the bill are true and
that he is executor and husband of the said
Barbara who is a legatee under the will
he made sale of Evan and Jacob for
whom he has accounted in the Court
before a Court, and the other slaves named
in the bill are in his possession except
Hannah and Sam, and believing that
under the will they belonged to the said
Solomon and his wife he sold them, &
his will is to account for the sales of them
when required to, and they may be
to be seized to. - signed

Solomon Daughtery, Exr.
Solomon Daughtery & wife Barbara

Levi R. Gardner, Nelson B. Gardner and
Lemuel Daughtery and Levi Daughtery executors
of Levi R. Gardner decd. -
Solomon Daughtery executor of Matthew Gard-
ner and Solomon Daughtery his wife
Barbara
This cause came on to be heard
on the bill, answer and exhibit filed thereon
agreed by Counsel; on consideration whereof
the Court doth agree, order and decree that
Solomon Daughtery executor of Matthew Gardner
render account before Mr. de Jones, before

Parker and ~~John~~ Joseph S. Lawrence
or any 2 of them who are for that purpose
appointed special Comrs., on ap. of the sales
of any of the slaves of Matthew Gardener
made by him (except Isaac and Jacob)
which of they are to make up, charge
the said Solomon Daughty with the value
of the slaves sold by him, (with the exception
of Isaac.) And that the said Comr. or
such as may act do divide the amt.
of the said slaves and the unsold slaves
of the said Matthew Gardener, so as to set
apart and allot one third of the said
slaves and money to Lem. R. Gardner
Nelson R. Gardner, Lem. Vazdan and
Lem. Daughty execs: of Leviak V. Gardner
and Solomon Daughty his wife Barbara.
That they then proceed to divide the
third part so allotted into 4 equal shares
and allot $\frac{1}{4}$ to Lem. R. Gardner, $\frac{1}{4}$ to
Nelson R. Gardner, $\frac{1}{4}$ to the said executors
of Leviak V. Gardner and the other $\frac{1}{4}$ to
Solomon Daughty his wife Barbara,
having cause to qualify & consent in making
such division, and that they make report
of their act, and doings, in order to a final
p. - But the parties entitled as aforesaid
before they take the benefit of this order, if
required by the execs: of Matthew Gardner
shall execute to him (or execs:) bonds as the
law directs.

Parsons &c

"

Parsons's Esq. &c

} Decease

A copy

Received May 9/1840 of the Clerk of Southampton County Court a bond
executed by Solomon Daughtery & Jos. J. Lawrence for the sum of two hundred
and thirty seven $\frac{14}{100}$ Dollars payable to Lemuel R. Gardner due the 1st day of June
1837.-

Lemuel R. Gardner

Southampton County November Court 1836

Samuel R. Gardner, Nelson B. Gardner and Samuel Vaughan & Samuel
Daughtery Exors. of Uriah N. Gardner decd

against
Solomon Daughtery exor of Matthew Gardner and Solomon Daughtery
and his wife Barbara

Plffs

Defts

In Chancery

This came on to be heard on the bill answer and exhibits filed and was argued by counsel: on
considerations whereof the Court doth adjudge order and decree That Solomon Daughtery Exor of
Matthew Gardner, render before M. M. Jones, Jesse Parker and Joseph Lawrence or any two of
them, who are for that purpose appointed special commissioners, an account of the sales of any
of the Slaves of Matthew Gardner made by him (except Esau and Jacob) which account they
are to make up, charging the said Solomon Daughtery with the value of the Slaves sold
by him (with the exception aforesaid). And that the said Comrs. or such of them as may
act do divide the acct. of the said Slaves and the unsold Slaves of the said Matthew
Gardner, so as to set apart and allot one third of the said Slaves and money to Samuel
R. Gardner, Nelson B. Gardner, Samuel Vaughan and Samuel Daughtery exors of Uriah N.
Gardner and Solomon Daughtery & his wife Barbara: That they then proceed to divide
the said third part so allotted, into 4 equal Shares and allot $\frac{1}{4}$ to Samuel R. Gardner
 $\frac{1}{4}$ to Nelson B. Gardner $\frac{1}{4}$ to the said Exors. of Uriah N. Gardner, and the other $\frac{1}{4}$
to Solomon Daughtery & his wife Barbara; having regard to quality & quantity in ma-
king such division, and that they make report of their doings and doing in order
to a final decree. But the parties entitled as aforesaid, before they take the bene-
fit of this order if required by the executor of Matthew Gardner shall execute to him
satisfying bonds as the Law directs.

Test L. R. Edwards Clk.

In obedience to an interlocutory decree 'Gardner &c vs Gardner's' executor, pronounced by the County Court of Southampton, at November Court 1836, your Commissioners proceeded on the 4th day of January 1837 to make up the account referred to in the annexed decree, from the vouchers and accounts rendered by the said Solomon Daughtry executor of Matthew Gardner dec^d. - your Commissioners proceeded first to estimate the value of the unsold slaves, namely;

negro woman Olive valued at	\$ 275.00
" boy Jo	700.00
" Robertson	400.00
" girl Fanny	300.00
" boy Peter	200.00
" " Isaac	125.00
" girl Selah (infant)	75.00
	<u>\$2075.00</u>
" woman Hannah (sold)	175.00
" boy Sam (sold)	100.00
	<u>1/3 ÷ 2350.00</u>
	<u>\$783.33 1/3</u>

being one third of the valuation of the sold and unsold slaves: we then placed negro boy Jo valued at \$700 with \$83.33 1/3 in lot no 1. Also Robertson and Fanny with \$83.33 1/3 in lot no: 2, and Olive, Peter, Isaac & Selah with \$108.33 1/3 in lot no: 3: whereupon the Plaintiffs in the suit drew No 1: and as a division among the heirs of said lot could not be effected without a sale of the boy Jo, it was agreed by the parties that Solomon Daughtry the exec^r as afores^d, should take the boy at our valuation, that is \$700: upon which the following statements were made.

Dr. Solomon Daughtry Ex ^r of Matthew Gardner dec ^d in acc ^t with the Heirs & Distributors of S. dec ^d .		Contra	Cri
1837. Jan: 4	To one third of the valuation of the sold and unsold slaves	\$783 33 1/3	
" " "	" Int: on \$91.66 2/3 for 5 years	27 50	
	Am ^t : carried forward	\$810 83 1/3	

Amt. brok. for and . . . $\$810\ 83\frac{1}{3}$

1837 Jan 4	By $\frac{1}{3}$ of Solomon Daughtery acc ^t for raising and supporting the fees going on goes	$\$165\ 00$
" "	" p ^r the expense of the decree	14 00
" "	" p ^r Commis fee	5 00
" "	" balance to debit	626 83 $\frac{1}{3}$
		$\$810\ 83\frac{1}{3}$

1837 Jan 4 To balance p^r Contra . . . $\$626\ 83\frac{1}{3}$

We then divided the above balance of $\$626\ 83\frac{1}{3}$ into four equal shares, making the sum of $\$156\ 71$ due each of the heirs: whereupon the Def^t Solomon Daughtery executed bonds payable to the parties respectively entitled, for the aforesaid sum of $\$156\ 71$ (in which were included, at the request of the parties, the sum of $\$56\ 43$ the balance appearing to be due each of the heirs upon a settlement of the executorial acc^t of said Exec. with the estate of Matthew Garoner dec^d making the sum total of $\$213\ 14$) we then delivered to Samuel Vaughn Esq. of Trials V. Garoner li^o one of those bonds and to Nelson B. Garoner one, each for the aforesaid sum of $\$213\ 14$ with Nelson B. Garoner security to the former and Saml. Vaughn security to the latter, and they executed refunding bonds as the Law directs. But Samuel B. Garoner refused to receive the bond made payable to him, in consequence of which, we now return the bond with our report to the Court to be filed thereunto.

all of which is respectfully submitted.

Given under our hands the 4th day of January A.D. 1837.

Wm M Jones
Joseph P. Lawrence

At a Court Held. for Southampton County. the 20th of August. 1837
This last will and Testament of Matthew Gardner and was proved by the oath
of the Witnesses and ordered to be record. And on the motion of Solomon
Paughtrey the Executor therein named who made oath thereto and together
with Edward Crumpler and Wm. V. Gardner the securing parties into and
acknowledged a Bond for the penalty of five thousand dollars conditioned
as the Law directs Certificate is granted the said Solomon Paughtrey
for obtaining a probat of the said Will in due form

Jesse James Rochelle Esq

Copy
Jesse James Rochelle Esq

Matthew Gardner's

Will

(A Copy)

In the name of God Amen. I Matthew Gardner of Southampton
County and State of Virginia being weak in body but of sound and perfect
mind and memory and knowing the uncertainty of human life do make and
ordain this my last Will and Testament in manner and form following
that is to say I desire that all my just and funeral expenses be paid and
I Wm. I bequeath unto my wife Mary Gardner one third part of my Estate both real and
personal during her single life and at the death or marriage of my wife I
desire that her thirds be equally divided between all my children hereafter
named.

I Wm. I give and bequeath unto my son Wrial T Gardner a certain Tract of Land
beginning at the branch off Samuel R Gardner's house thence up the path
to the End of the lane thence down the path to Rhoda M Clenny's line
thence my line to the said branch thence up the said branch to the first station
to him and his heirs forever and no more

I Wm. I give and bequeath unto my son Samuel R Gardner a certain Tract of
Land that I purchased of William Fowler and thirty dollars cash to him
and his heirs forever and no more

I Wm. I give and bequeath unto my son Nelson R Gardner fifty dollars cash
to him and his heirs forever and no more.

I Wm. All the balance of my Estate both real and personal I desire may be
Equally divided between my daughter Barbara E Daughtry and her
three children to wit John Harrison B Daughtry, Samuel M E
Daughtry and Margaret Jane Daughtry to them and their heirs forever

Lastly I desire that my Executor sell my two boys Eli and Jacob for the best price
he can obtain from any man that will carry them to the Mississippi State
and I hereby appoint my son in Law Solomon Daughtry my whole &
sole Executor to the my last will and Testament revoking all other wills
or Testaments heretofore made by me. In Witness whereof I have set
my hand and seal this 10th day of August 1827

Signed and acknowledged
and for the last will and
Testament in presence of

Philip A R C Bohoon
Isaac Johnson
Elbridge A Mayford

Matthew Gardner
mark