

1000 05

Southampton County Chancery - Gardner, Esther E. et als vs Gardner, George (de.)

to reassign will

Gardner, George H.

i
h
x
e
t
s
{
" , Jeremiah H.
" , Emily A.
" , Ruth L.
" , Paul

(Represented by Edith C. Gardner)

Atkinson, Wm (admin)

Ashburn, Henry

" Elmira

McClenny, Thomas A.

" , Diana L.

Hundley, John

, Delia

Gardner

"

Gardner sr.

} cly

and

Arbman wife

"

Gardner sr.

} cly

It appearing to the Court that since the rendition of the Last Decree in this cause, that Wm Atkinson the adm^r of Geo. H. Gardner dec^d. has also died and that Thomas J. Clements has become in one course of law his ^{also the adm^r de bonis non of} adm^r. ^{Geo. H. Gardner dec^d} that both of the above named suits have by scire facias, been revived against said Thos. J. Clements as the personal Representative of said Wm Atkinson dec^d. of said Geo. H. Gardner dec^d. The said causes came on to be heard together on the papers formerly read & on the report of Mr. L. Butler, a. L. Nelson, & Ro. W. Stephenson made pursuant to the Decree of May Term 1873 of this Court - to which report there is no exception, and was argued by Counsel.

On consideration whereof, the Court with Con- firm the said Report, and with adjudge order, order and Decree that Mr. Elisha C. Gardner, widow of the said

Geo. H. Gardner dec'd, take hold for life the Land named
 in said Report set apart as & for her dower in the Lands of
 said Geo. H. Gardner dec'd: and that she also take
 hold for herself & the Infant children of said Geo.
 H. Gardner and the Lands approp'd to her & them
 for a Homestead in said Lands, to be held on the
 terms of the Law, and the Court doth adjudge
 order & decree that Thos. J. Clements as admin-
 of said Geo. H. Gardner dec'd pay out of any
 estate of said Geo. H. Gardner dec'd, in his
 hands to be administered, the costs of these suits,
 & orders that the cause be removed from the
 Docket — And Liberty is reserved to any of the
 said parties to apply to the Court to reinstate this case
 on the Docket & to apply for such further relief as may be
 proper.

Gardner & W. Gardner

and

Arthur J. & Gardner
admin to

1873

now est et

final decree

to be entered

Geo. J. Bloss.

Gardner's

~ } Stat. Rules

Gardner's adm of

In Southampton Circuit Court

Esther E Gardner, widow, of Geo: H Gardner dec'd & Jeremiah H. Gardner
 Emily A Gardner Ruth L Gardner & Paul Gardner the last four infants suing in this
 behalf by their said Edith E Gardner their next friend
 against

Wm. B. Atkinson admor of Geo: H. Gardner dec'd Henry Ashburn & Elmira F. his wife
 & Tho: A McClenny & Diana L his wife -

1872 July 30. Summons issued

" Aug. R Ret too late to hand to execute - Another Sum. awarded

" Sep. Ret too late to hand to execute - Another Sum. awarded

" Oct. Ret. Executed. Bill filed - D. Nisi & Defs.

" Nov. (last Mon. Oct) Bill taken for confessed & cause set for hearing 12

1873 May. Decree to assign Homestead of Donor

" Aug 7th Report

" Sep. 24th Sci. fa. to revive to Wm. T. Clements Curator Wm. Atkinson & as
 a Tr. B. Atm Geo H Gardner dec'

" Nov. T. Decree final

1879 Nov Cause reinstated on Docket and parties to be same P

1880 May. T. Former decree set aside & decree to allot donor.

Came to hand too late to be
executed.

W. Briggs's slip

Gardner 80
to. } Sum. Chr.

Gardner's adm. fee
1872 August Rules.

The Commonwealth of Virginia

To the Sheriff of Southampton County, Greeting:

WE COMMAND YOU to summon *Wm. Atkinson admor. of George H. Gardner*
Henry Ashburn & Elmina F. his wife Tho. A. McCluney & Diantha I. his wife
& John A. Humbley & Delia his wife
if *they* be found within your bailiwick, to appear at the Clerk's Office of our *Circuit*

Court of Southampton County, at the Rules to be holden for the said Court, on the first Monday in *August next*

To answer a bill in Chancery exhibited against them in our said Court by
Esther E. Gardner widow of George H. Gardner dec. Jeremiah A. Gardner. Emily
A. Gardner, Ruth L. Gardner & Paul Gardner the last four being infants suing
in this behalf by the said Esther, E. Gardner their next friend

J. R. Edwards

And have then there this writ. Witness, ~~OSWIN WHITE~~, Clerk of our said Court, at the Court
house, this *30* day of *July* - A., D., 1872, in the *97* year of
the Commonwealth.

J. R. Edwards

Gardner

to } Mr. Sum. ch

Gardner's adm of

1872 September Rules

Came to hand to
late to be executed

wa Brigg's aff.

Per Jp

The Commonwealth of Virginia

as at another time we have

To the Sheriff of Southampton County, Greeting;

WE COMMAND YOU to summon *Wm. Atkinson admor. of George H. Gardner. Henry Ashburn*
Elmira & her wife. Tho. A. McLenny & Diana & her wife & John A. Hundley & Debra her
wife

if *they* be found within your bailiwick, to appear at the Clerk's Office of our Circuit
Court of Southampton County, at the Rules to be holden for the said Court, on the first Monday in
September next to answer a bill in Chancery exhibited against them in our said Court
by Esther E. Gardner widow of George H. Gardner dec'd. Jeremiah A. Gardner
Emily A. Gardner. Ruth E. Gardner & Paul Gardner the last four being infants
 suing in this behalf by the said Esther E. Gardner their next friend.

L.R. Edwards

And have then there this writ. Witness, ~~OSWIN WHITE~~, Clerk of our said Court, at the Court-
house, this *5* day of *August* A., D., 1872, in the *97* year of
the Commonwealth.

L.R. Edwards

Wms of the within parties are in-
habitants of My County.

Sept-10th 1872

E. J. Chapman Esq
Bar of Mississippi

Gardner Esq
to } Sum. Chs-

Gardners adm
1872 October Rules

I O Kight

The Commonwealth of Virginia

as often times heretofore we have commanded

To the Sheriff of ^{Ile of Wight} Southampton County, Greeting:

WE COMMAND YOU to summon

*Wm. Atkinson adm. Geo. H. Gardner dec. Henry
Ashburn & Elvira his wife Thos. A. M. Clumy & Diana & his wife of John
A. Humbley & Ld his wife*

if they be found within your bailiwick, to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules to be holden for the said Court, on the first Monday in

*October next to answer a bill in chancery exhibited against them in our said Court by
Esther E. Gardner widow of George H. Gardner dec. Jeremiah A. Gardner Emily A.
Gardner, Ruth S. Gardner & Paul Gardner the last four being infants suing for
this behalf by the said Esther E. Gardner their next friend*

J. R. Edwards

And have then there this writ. Witness, ~~OSWIN WHITE~~, Clerk of our said Court, at the Court-house, this 2^d day of *September* — A., D., 1872, in the 77 year of the Commonwealth.

J. R. Edwards

Gardner's
Sum. Chy.

Gardner's arm
1872 October Rules

Exhibit 2012 1872 by delivering a
copy to Henry Johnson 1872

W. H. C. B.
1872

The Commonwealth of Virginia

as often times heretofore we have commanded

To the Sheriff of ~~Southampton~~ County, Greeting:

WE COMMAND YOU to summon *Wm. Atkinson* admor: of *George A. Gardner dec^d Henry Ashburn & Elmira F. his wife Tho. A. M. Clenny & Diana L. his wife & John A. Hundley & Delia his wife*

if *they* be found within your bailiwick, to appear at the Clerk's Office of our *Circuit* Court of Southampton County, at the Rules to be holden for the said Court, on the first Monday in *October next* to answer a bill in Chancery exhibited against them in our said Court, by *Esther E. Gardner widow of George A. Gardner dec^d. Jeremiah A. Gardner. Emily A. Gardner. Ruth L. Gardner & Paul Gardner the last four being infants* suing in this behalf by the said *Esther E. Gardner* their next friend

L. R. Edwards

And have then there this writ. Witness, ~~OSWIN WHITE~~, Clerk of our said Court, at the Court-house, this *2* day of *September* A., D., 187*2*, in the *94* year of the Commonwealth.

L. R. Edwards

Gardner Jr

v. } Sum. Chy.

Gardner adm Jr

1842 October Rules

Executed 28th Aug 1872.

at Hockley
Dug S. H. H.

The Commonwealth of Virginia

as ~~often~~ times heretofore we have,

WE COMMAND YOU to summon *M^r Atkinson admo. Geo: H Gardner dec^d Henry Ashburn & Elmira F. his wife. Tho: A. McClemy & Diana L his wife. & John A. Hurdley & Delia his wife*

To the Sheriff of Southampton County, Greeting:

if *they* be found within your bailiwick, to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules to be holden for the said Court, on the first Monday in October next. To answer a bill in chancery exhibited against them in our said Court by *Esther E Gardner widow of George H Gardner dec^d. Jeremiah A. Gardner, Emily A Gardner, Ruth L Gardner & Paul Gardner the last four being infants' Sundry in this behalf by their said Esther E Gardner their next friend*

And have then there this writ. Witness, *J R Edwards* ~~OSWIN WHITE~~, Clerk of our said Court, at the Court house, this *2* day of *September* A., D., 1872, in the *97* year of the Commonwealth.

J R Edwards

Gardner

} Report

Gardner 8th

Wm H. Bradshaw

Eliza Lewis

L. C. Lebb

Joshua Patton

L. Doyle

1873 Aug 7 Recd

Confirmed in Nov
1873, but afterwards
Cancelled by de-
cree of May Term
1880

To The Circuit Court of Southampton County. —

The undersigned respectfully report to the Court,
that They have executed the decree of said Court made at May
Term 1873, in the Causes of Esther C. Gardner &c against
Wm. Wilkinson Admr. of George A. Gardner dec'd &c and of Ash-
burn and wife & others against same and now report the result
of their action, in the first place, we proceeded to reassign the
said Esther C. Gardner, one third in value of the real Estate of which
the said George A. Gardner her husband died seized and possessed,
and included in the following bounds, To wit —
Commencing at the back of the ^{Gardner} at the Centre mark thence a straight
line South East to Black Creek Swamp, thence down said Swamp to John
Cornell's line, thence up Cornell's line to Hiddick Edwards line, thence
along the said Edwards line to Olisha Lewis' line, thence along the said
Lewis' line to the County Road, thence up the path to the front gate
of the Residence, thence down the Centre of said line through the passage
of the dwelling to Commencement the said Esther C. Gardner having
the South East portion of the dwelling with the right of way to any
portion of the building included in this report. — We then proceeded
to assign to the said Esther C. Gardner, Jeremiah A. Emily A. &
Nath & Paul, Gardner Two thousand Dollars as Homestead
selected by the parties, to wit, The balance of the farm
valued at Two thousand Dollars (\$2000 —)
Respectfully Submitted,

M. D. Butler
A. L. Kelso
R. M. Stephenson

John Melvin

Gardner &c
17 3
Gardner &c

Answer of
Esther E. Gardner

To the Hon George Blaw

Judge of the Circuit Court of Southampton

Humbly petitioning, your petitioner, Esther E. Gardner, widow of George H. Gardner deceased, of said County, respectfully states to your honor that your petitioner has this day received notice of the order made at the November term 1879 of this Court requiring her to show cause why the Homestead assigned to her & others in the real estate of which her said husband died seized should not be set aside.

Your petitioner prays, that in the event it should be the opinion of your honor that the order granting the said homestead should be set aside, that the order granting dower to her may be also reconsidered -

Because your petitioner says, That the land so assigned to her as dower is of no value to her without the said land which was assigned at the same time, as her homestead - That the said dower is so located that she can not have access to it without trespassing on the homestead -

That the commissioners who assigned the said dower

stated at the time they made the said apportionment that they would not so make it, but for the reason that your petitioner had the Homestead land also — the line separating the Homestead from the dower runs through the dwelling house, cutting off the passage of said dwelling house to the Homestead, so that your petitioner could not reach the upper rooms of that part of the house which was assigned to her, down by using the passage & stairs, but could do so only by using a ladder on the outside of the house.

Your petitioner would have filed exceptions to the apportionment of dower at the time it was made, but for the reason that the homestead was assigned with the said dower — But if she should now be deprived of the said Homestead the said dower, in its present shape would be valueless to her.

And your petitioner will ever pray &c

Esther E. Gardner...

Virginia — Southampton County — Veritas

M. Lauckford a justice of the peace for said County, in my said County, the above named Esther E. Gardner & made oath that the statements made in the foregoing petition are true, to the best of her knowledge & belief.

Witness my hand this 28 day of April 1880

M. Lauckford J. P.

The Commonwealth of Virginia

Gardner }
v } Sci. fa.

Gardner adm. }
v }
1873

November. Cir. Ct.

Granted by delivering
to the within named
Thomas J. Clements
a true copy of the within
Summons Oct. 6th
1873

A. B. Edwards
Shiff

J. O. Wright

The Commonwealth of Virginia,

Isle of Wights
TO THE SHERIFF OF ~~SOUTHAMPTON~~ COUNTY--GREETING:

WHEREAS

Esther E Gardner, widow, of Geo. H. Gardner dec'd & Jeremiah H. Gardner. Emily A Gardner. Ruth S Gardner & Paul Gardner the last four being infants. Suing in this behalf by said Esther E Gardner their next friend

heretofore exhibited to our

of complaint against

Circuit Court of Southampton County, sitting in chancery, *their* bill
Wm. Atkinson admor. of Geo. H. Gardner dec'd & others

whereupon sundry proceedings have been had, as appears from the records and files of the said court, but before a final decree could be pronounced in the cause, the said *Wm. Atkinson*

departed this life

and Thos. J. Clements has qualified as Curator of the estate of the said Wm. Atkinson dec'd and administration on the estate of the said Geo. H. Gardner dec'd unadministered by the said Wm. Atkinson has been committed to the said Thos. J. Clements in due form as we are informed

And the said

Esther E Gardner widow &

having supplicated us for

a proper remedy in this behalf, and we being willing that what is right and just should be done: Therefore, we

command you that you make known according to law to the said *Thos. J. Clements Curator & admor. as aforesaid*

that he

before the judge be at the ~~Clerk's office~~ of our said *Circuit* Court, at the *Courthouse on the first* ~~rules to be holden for the said~~ *on the first day of the next Term of the said Court* to shew cause, if anything, for *himself* ~~he~~ have or know to say why the said suit should not be proceeded into a final decree *against him in his character as aforesaid*

and be in all things in the same plight and condition as it was at the time of the of decease the said *Wm. Atkinson*

and further to do and receive what our said Court shall in that part consider. And have then there this writ.

Witness, *L R Edwards*

~~SWIN WHITE~~ Clerk of our said Court, at the Courthouse, this *24* day

of

September

1873, in the

98th

year of the Commonwealth.

L R Edwards

Kelly p 9
Esther E. Gardnersdal

W. { Rice

~~Esther E. Gardnersdal~~
Sal..

see Blomby
Spice

1872 October Rules

South. Cir. Ch.

To the Hon. Geo. Blow Jr. Judge of the
Circuit Court of Southampton County,
Virginia.

Complaining shew unto the
court, your complainant Esther E.
Gardner, widow of Geo. H. Gardner dec'd,
and Jeremiah A. Gardner, Emily A. Gardner,
Ruth L. Gardner and Paul Gardner, the
last four being Infants, suing in this
behalf by said Esther E. Gardner their
next friend -

Your Complainants respectfully
represent to the court and say, that the
said Geo. H. Gardner dec'd, on the
day of 1871 Intestate, leaving as his
heirs & distributees at law, his said widow,
Esther E. Gardner, and six children, to wit:
Elmira. He now the wife of Henry Ashburn,
Diana L. now the wife of Mr. A. McClintock,
Belia now the wife of Dr. A. Humbley,
and said Jeremiah A.; Emily A.; Ruth
L.; and Paul Gardner - the last four being
Infants -

That the estate of said Geo. H.
Gardner has been administered on in the
County Court of Southampton County by
John Atkinson Esq - who has taken charge
thereof - That the said Geo. H. Gardner

was not settled to any considerable extent
That The said George H. Gardner did
survey and prepare of a tract of Land in
the said County of Southampton containing
403 1/4 ————— acres more or less
and adjoining the lands of
son Black creek

and in which owner has been heretofore
assigned to said Esther E. Gardner —

Your Complaintants say That as the
Law now is they, as the widow and
minor children of said deceased are
entitled to ~~an~~ ~~equity~~ have assigned
to them Two Thousand dollars in value
of real or personal estate, or part of both,
and which they may now be done, known
as the ~~Hogstedt~~ ~~equity~~.

In Consideration whereof ~~and~~ as
this Court has jurisdiction to grant all
adequate relief — do the said your Com-
plainants pray that Wm Atkinson administrator
of Geo. H. Gardner dec'd, Henry Ashburn
and Elmira D. his wife, Thos. A. McKelney
and Diana L. his wife, and Geo. A. Hurdly
and Selia his wife, may be made
defendants hereto, and answer the
allegations herein on oath — That the
said \$2000 in value of real & personal estate
may be duly set apart to said plaintiffs

and that all other (and further relief
may be granted, consistent with Equity or
either E. Gardner & Co.
by John R. Kelly, etc.

Gardner

to { copy done

Gardner adm H^p

H

Gardner

to { copy done

Ashburn H^p

Southampton Circuit Court May term 1873

Esther C. Gardner widow of Geo. H. Gardner dec^d and
Jeremiah H., Emily A., Ruth L. and Paul Gardner Plaintiffs
against

W^m Atkinson adm^r of Geo. H. Gardner dec^d. Henry Ashburn &
Elmira F. his wife, Tho. A. McCluney & Diana L. his wife Defendants

In Chancery

Henry Ashburn & Elmira F. his wife who before marriage was
Gardner, Tho. A. McCluney & Diana his wife, who before marriage was
Gardner, John A. Hurdley & Julia his wife who before marriage was
Gardner & Jeremiah H. & Emily A. Gardner Infants who
sue by John A. Hurdley their next friends. Plaintiffs
against

In Chancery

William Atkinson adm^r of Geo. H. Gardner dec^d. - Esther C.
Gardner, Ruth L. & Paul Gardner, the two last Infants - Defendants

The first of the above named causes came on to be heard on the Bill of the
Complainants taken for confessed, as to the Defendants on whom process had been
duly executed and they still failing to appear and make defense; and the second
of the above causes came on to be heard on the Complainants Bill taken for
confessed as to the Defendants W^m Atkinson adm^r of Geo. H. Gardner dec^d,
on whom process had been duly executed & he still failing to appear and make
defense; and on the answer of Esther C. Gardner this day filed and on
answers of the Infant Defendants by their Guardian ad litem, replication to
said answers, and on Exhibits filed with said Bill, & on examination of witnesses,
and was argued by Counsel; On Consideration whereof the Court deciding that
said Esther C. Gardner widow of said Geo. H. Gardner dec^d and the
infant children of said deceased, are entitled out of the Estate of said Geo.
H. Gardner dec^d to a Homestead and Constitutional Exemption of Two

Thousand dollars, doth adjudge, order and decree, Milton D. Butler,
 J. M. Stephenson, A. L. Nelson, Jesse B. Vick, (any three of whom may act
 proceed to set ^{apart and} assign to said Esther C. Gardner and the Infant Children
 of said Geo: H. Gardner, dec'd. Two thousand dollars worth of real,
 personal, moneyed, or other Estate of said deceased to be held by them as a
 Homestead and Constitutional Exemption, which Estate is to be selected by said
 Esther C. Gardner, for herself or said Infant Children and make report to
 Court. And by consent of parties, the Court doth adjudge, order and decree
 that the same Commissioners (or any three of them) proceed to reassign to said
 Esther C. Gardner, one third in value of the real Estate of which said
 Geo: H. Gardner died seized & possessed, as and for her Dower therein,
 and make report to Court.

Attest

Teste, S. R. Edwards

Gardner
 & } Costs
 Gardner's ad &

Self's Costs

Costs	\$14.18
Self's	4.50
Law &c	<u>16.00</u>
	\$ 34.68

Opp's Costs

Costs	\$ 0.00
Self's	0.00
Law	<u>0.00</u>

Ashburn N
 to } Cont
 Gardner N

Self Cont

blks \$5.19

Sh. 2.80

J. W. Sebell Com 5.00

Law. fee N 16.00 \$28.99

Self Cont

blks \$1.70

Sh. 1.60

H. R. Griffin 5.00

Witnesses 5.72

Law 15.00 \$29.02

Gardner & n. Gardner &
and

Ashburn & n. Gardner & n.

The first of the above named
Cases came to be heard on the Bill of the
Complainant taken for Confessd. as to
the Defendants, on whom process has been
duly executed, and they still failing to
appear & make defence. (And the
second of the above cases came on to be
heard, on the Complainants' Bill taken for
Confessd. as to the Defendant ~~Wm. Harrison~~
widow of Geo. H. Gardner decd, on whom process
has been duly executed she still failing to
appear & make defence, & on the answer of
Ethel E. Gardner, this day filed & on answers
of the Infant Defendants by their guardian
ad litem, replications & said answers, & on
Exhibits filed with said Bill & on examination
of witnesses, and was argued by Counsel.

On consideration whereof, the Court deciding
that said Ethel E. Gardner widow of said
George H. Gardner, and the Infant children of
said decd are entitled out of the estate
of said George H. Gardner and to a Homestead
& Constitutional exemption of \$2000, with
adjudge order and decree that Milton D
Butter, R. M. Stephenson, A. L. Nelson &

Jpse B. Vick, (any three of them may act)
 Jwaist to set apart said said Ethel E
 Gardner & the Infant children of said George
 H Gardner and, \$2000 worth of real, personal
 moneyed or other estate of said deceased
 & be held by them as a Homestead & Constitutional
 Constitution exemption, which estate is to be
 selected by said Ethel E. Gardner for herself
 said Infant children, and make report to
 Court,

and by Consent of parties, the Court
 doth adjudge, order & decree that the same
 Commissioners (or any three of them) proceed
 to receive, to said Ethel E. Gardner one
 third in value of the real estate of which said
 George H Gardner died seized & possessed, and
 for her done therein, and make report to Court

Gardner v. Gardner

&
Gardner v. Gardner

1873
 May Cir. Ct.
 Decree
 to be
 signed
 J. B. Vick