1884-01 Southampton County - Chancery Ashburn, Henry, etals Vs. Gardner, George H's Est

"To reassign Dowers +"
infants funds

Ashburn, Henry +
Ashburn, Elvira his wife

McClenny, Thomas A +
McClenny, Diana his wife

Hundley, John A +
Hundley, Lelia his wife

Gardner, Jeremiah
Gardner, Emily A.

Atkinson, Wm. Asm.
Gardner, Esther
Gardner, Rush L.
Gardner, Paul

To the Honorable Jorge Blow judge of the circuit court of Southampton in chancery sitting

Humbly complaining your orators Henry Atkinson and Elmira F his wife who before marriage was Gardner, Thomas A McElhany and Diana his wife who before marriage was Gardner and John A Handley and Delia his wife who before marriage was Gardner, and Jeremiah A Gardner Emily A Gardner infants who sue by John W Handley their next friend Shew unto your Honor, that in January 1872 Jorge W Gardner of Southampton County departed this life intestate having considerable estate real and personal and Mr Atkinson qualified as his administrator, that he left his widow Esther E Gardner, Elmira F. Diana, Delia, Jeremiah A. Emily A, Ruth L and Paul Gardner the four last infants his children his distributees and heirs at Law

Your Orators state further that Mr Atkinson has sold the personal estate and has allotted a considerable sum of money to Esther E Gardner

the widow under the provisions of the said
to which the minor children of whom
there are four are equally entitled with
the widow, They show further that at
the January term 1872 of the county court
of Southampton, On motion of Henry
Ashburn and his wife & others heirs of
Jorge Gardner an order was made
appointing John Camp, M. M. Clayton, L. C.
Cobb, G. W. Vick and Shugars Lain commissioners
any three of whom might act to allot to
Esther A Gardner her dower in G. H.
Gardners Estate. On the 2nd of February 1872
G. W. Vick and M. M. Clayton two only of
the commissioners appointed made a report
along with Salathiel Lewis who was a
stranger to the record and a volunteer
in the case that they had allotted to
the widow her dower in the said Lands
setting it forth by metes and bounds
this report was returned to said county court
and confirmed at the March term of
the county court. All the papers in
the case is the order of the court and
the report of the two commissioners and
Salathiel Lewis official copies of which are
herewith filed marked A and B and
prayed to be taken as parts of this bill

Your Orators ask that this whole
proceeding may be set aside and that
your Honor would order a re-assignment
of dower and for the following reasons
that though this assignment of dower may
have been made at the instance of some
of the heirs yet your infant orators
had nothing to do with it that when
the commissioners proceeded to allot
dower they wholly failed to give the
heirs at Law notice of the time and
place of acting, and that only two of
the commissioners appointed proceeded
to act when three were specially required
by the order, That these two without
notice along with Mr Lewis allotted
to Esther E Gardner more than one
half in value of the real estate
of the said intestate instead of one
third

Your Orators state further that
the widow after receiving the proper
dowry they know has used and this extravagant
allotment of dower has now filed
her claim for the homestead by a
bill in chancery in this court which
will be heard at the same time with

this suit and only then is a resignment of dower, what with her poor debtors exemptions and homestead and dower she will absorb the whole estate.

In Tender consideration whereof and inasmuch as your orator is without relief at Law and only entitled to relief in a court of equity where such matters and pleading especially they thereon pray that McAlexander administrator of George B. Gardner and Esther E. Gardner, Ruth L. Gardner and Paul Gardner the two last infants by some fit and proper person their guardian ad litem appointed for this purpose may be made parties defendant to this bill and that the court would compel them as full and perfect answer make to the allegations therein contained as if they had been thereto more fully and specially interrogated, That the court would compel McAlexander to answer how much he has paid Esther E. Gardner under the poor debtors exemptions and whether it was for her benefit alone or for her and the infant children That the court would set aside the report of J. H. Vick, M. M. Clayton and Salathiel Lewis allotting the widow dower and appoint commissioners

to lay off the dower of the widow
in the estate of J. H. Jardine and
that the court would after the re-
allotment of dower and after Mrs
Albinson has settled his administration
account of the estate showing what
money is in his hands proceed to
make a proper disposition of the
homestead exemption and homestead
according to the rights of all the
parties owning it so as to have it
assigned either about of distribution
at the termination of the homestead
and distribute the residue of the estate
according to the rights of the parties
either by sale or division as may
be best on the proper reports, and that
the court would grant such other and
general relief the premises considered as
equity may dictate and the nature of
their case may require and as in duty
bound your orator will ever pray &c

Chancery J. C.

Southampton County Court January 15th 1872.

On the motion of Henry Ashburn & Elmira his wife & others heirs of George H. Gardner dec'd and for reasons appearing to the Court It is ordered that John Camp, M. M Clayton L C. Cobb G W Vick & Thagard Law, any three of whom may act. do lay off and assign by proper metes and bounds to Edith E Gardner her Dower in the lands of her late husband George H Gardner dec'd - one third in value - in this County. and make report to Court -

A Copy

Southampton County Court February 19th 1872.

The Commissioners appointed at the last term of this Court to assign dower to Edith E Gardner widow of George H Gardner. in the real estate whereof her said husband died seized in this County this day made their report which is ordered to lie one month for exceptions.

Southampton County Court March 21. 1872.

The Report of the Commissioners assigning dower to Edith E Gardner in the real estate of which her husband George H. Gardner died seized having lain one month in the Clerks Office and no exceptions having been filed thereto, it was examined, confirmed and ordered to be recorded. and is as follows -

"To the County Court of Southampton County Virginia. Pursuant to a decree of the County Court of said County rendered at the January Term 1872, the undersigned Commissioners appointed to allot to Esther E Gardner widow of Geo. H Gardner dec'd her dower in the real estate of said Geo. H. Gardner herewith report that on the 20 day of January 1872. they proceeded to discharge the duties conferred by said decree and allotted the said Esther E Gardner the following real state - The line commencing at the West Corner of the Grave yard and runs Straight from said grave yard the West side of the lane to the outer fence

and down said fence east to a marked Pine and strait from said Pine to an oak on the line between Elisha Lewis and said estate - and down said line East to John A Councils line and down said Councils line to the Mill Swamp, and up the Mill Swamp opposite the fence running by the Blacksmiths Shop and up said fence to the grave yard - estimated at One hundred & twenty acres - G. W. Vick M M Clayton Salathiel Lewis Commrs"

Copies.

Test D R Edwards Clk

A 113

Ashburn Lugg & Co
vs.
Edwards Adm with Will
Gardners &c

69

September 21st 1872

Mrs Esther Jardine

Take notice that I shall on Friday the 18th of October 1872 at the office of Wm B Shances in the town of Jerusalem between the hours of 10 o'clock and sunset proceed to take the depositions of William G Robinson Howard Cleveland and others as evidence in my behalf in a certain suit now pending in the circuit court of Southampton in which I and others am plaintiffs and you and others are defendants to be continued from day to day until finished at which time and place you may attend if you see fit.

John A Handley

(over)

Duncan Scott personally appeared
before me a Justice of the Peace
and made oath that the annexed
a copy of the within notice
to Esther E. Gardner on the 12th of
October 1872 given under my hand

S. Lewis J.P.

The Depositions of William Atkinson Geo. A. Cobb and others taken at the office of Wm B Shands in Jerusalem on the 18th of October 1872 to be used as evidence in behalf of John A Wimbley and others in a certain suit pending in the Circuit Court of Southampton between John A Wimbley and others vs Wm Atkinson adm of Geo Gardner and Estate & Gardner and others.

Wm Atkinson having been first duly sworn deposes and says as follows

1st Question by Plaintiff's Counsel — What is your occupation, age and where do you reside.

Ans. I am a Farmer, in my 60th year, and my land adjoins that of Geo H Gardner.

2nd Question by same. State all you know about the allotment of dower to Esther Gardner, in the lands of her husband, the late Geo. H. Gardner, and whether in your Opinion she did not receive more than one third, as dower, of the interest in said Estate.

Ans. Not long after the death of Mr Geo. H. Gardner, his widow instructed me to report to the Lawyer employed in behalf of the Estate, to obtain a Decree to

sell the whole of the Real Estate, and to give her portion in fee simple, which I did, and I expected everything was working right, and came round to each of the parties concerned, but on the morning of the day of Sale, she, the widow, came to me and said she demanded her thirds in portion of Land. I at first told her that I would not carry such a message to the Lawyer employed by the Est, but upon reflection I did carry the message, and was advised by him to have Commissioners appointed to set apart her dower, which was done.

I was present at the allotment of her thirds and assisted in Chopping the lines, by request of the Commissioners. I at various times on that day told them that I thought the allotment was unreasonable, but the Commissioners replied that they should do as they thought proper, and that any party who objected would have their redress by having as many Commissioners appointed as they thought fit. In my opinion the land allotted her as dower is at least one half in value, of Geo. H. Gardner, Real Est.

I am Executor of Geo. H. Gardner. dec'd

and rented the lands belonging to the Estate of Dower, for this year for One Hundred and One 25/100 Dollars. as well as I remember. All of the Houses except the Gin House and the different fields and Orchards and all the timbered land of any value were allotted to her as Dower,

And further this deponent saith not.

William Atkinson

Mr. Leonard C. Cobb, having been first duly sworn, deposes and says as follows—

1st Question by Plaintiffs Counsel. What is your occupation, age & where do you reside?

Ans— I am a farmer, 56 years of age, and reside near the lands of the late Geo. H. Gardner.

2nd Question by same. Are you well acquainted with the value of the real Estate left by Geo. H. Gardner, and what do you think is the value of the Dower allotted to Esther E. Gardner, in the lands of said Geo. H. Gardner, compared to the rest of the real Est.?

Ans. I think I am well acquainted with the value of these lands, and I think her dower is worth as much as the

remainder of the Real Est, and if sold at public Auction, would bring as much or more.

3rd Question by same. What houses were allotted her, and who had the Orchards and what amount of brandy do you think the Orchards capable of making

Ans. The Dwelling and all of the Out houses except the Gin House & two Out houses in different fields; the Orchards were also allotted her and will yield I think, this year Six Barrels of Brandy —

4th Question by same. What do you think the Dower which has been allotted Esther E. Gardner, would be worth per year.

Ans. I think it would bring One Hundred and Twenty five dollars per year.

And further this Deponent saith not —

L. G. Cobb

Wm. J. Richardson, having been first duly sworn, deposes and says as follows.

1st Question by Plaintiffs Counsel. What is your occupation, age & where do you reside.

Ans. I am a Farmer, 45 years of age, and reside on lands adjoining those of Geo. W. Gardner.

2nd Question by same. What do you think is the value of the lands allotted to Esther E. Gardner, in comparison with the value of the rest of the Real Est.

Ans, I think it worth more than the rest of the land, and would give more for it. I think her Dower is 3/5ths in value of the whole real Estate. I mean by Dower, that portion which was allotted her by the Commissioners.

And further this deponent saith not.

W. J. Richardson

Willis Bradshaw, having been first duly sworn, deposes and says as follows.

1st Question by Plaintiffs Counsel. What is your occupation, age & where do you reside.

Ans. I am a farmer, 52 years of age and reside near the lands formerly belonging to Geo. W. Gardner.

2nd Question by same. Do you think the lands allotted by the Commissioners to Esther E. Gardner, as Dower, was more or less in value than one third and what do you think is the Comparative value of the lands—

Ans— If I wished to buy the lands I would give more for her part than for the remainder of the lands, I consider the portion allotted her more than one half in value of the whole real Estate of George W. Gardner dcd.

And further this deponent saith not.

Willis Bradshaw

Comrs fee
$6.00

I hereby certify that the foregoing Depositions of Wm Atkinson, L. Cobb, W. J. Richardson and Willis Bradshaw were taken before me at the time and place mentioned in the Caption.

Given under my hand this 18th day of October 1872

J. N. Sebrell, Comr in Chancery
County & Circuit Courts.

Ashburn & others
vs & Depositions
Gardner's Administrators

Handed in by J. N. Sebrell
Com. Oct. 26. 1872.

Gardner

Ses. Sfcs.

Ashburnham Miss.

"

Executed

W. W. Briggs Shff

The Commonwealth of Virginia

To the Sheriff of Southampton County--Greeting:

WE COMMAND YOU TO SUMMON S Lewis Geo W Vick M M Clayton Ro. M Edwards, A. T. Stephenson, Jas. Brister, Elisha Lewis, J Willis Bradshaw

to appear ~~before the Judge of our~~ at Franklin ~~Court of~~ Southampton county, ~~at the Court House~~, on the 5th day of April next ~~term~~, to testify and the truth to say on behalf of Esther E Gardner in a certain matter of controversy in our said court depending and undetermined between said Gardner Plaintiff and Ashburn Heath Defendant And this they shall in no wise omit, under the penalty of £100; and have then there this writ.

Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court House, this 24 day of March 1873, in the 97 year of the Commonwealth.

L R Edwards Clk

1873 Mar. 18 Jennie Kent
admrx pd for the plaintiff
Nov 13 Allowed
Atty for plaintiffs

Gardner
v
Gardner &
al
5 Oct 1873

To Henry Ashburn (Berlin), and Elmira his wife who before marriage was Gardner, Thomas A McClenny (Berlin) and Diana his wife, John A Hundley (Berlin) & Celia his wife, Jeremiah A. Gardner Emily A. Gardner,

Take notice that I shall on Saturday the 5th day of April 1873 at Franklin, in the County of Southampton, proceed to take the depositions of S. Lewis & others, to be read as evidence in my behalf in a suit in Chancery now pending in the Circuit Court of said County wherein you are plaintiffs and I and others, defendants. Wes said depositions will be taken between the hours of nine a.m. & 6 p.m. of that day if not completed on that day will be adjourned from time to time or from day to day, until completed.

Eythey E. Gardner for self & others & their atty

18 Mar. 1873

/

Depositions of S Lewes. M.M. Clayton Robert M. Edwards. James Broster, and Elisha Lewes Taken on the 5th day of April 1873 between the hours of 9 a.m. & 6 p.m. of that day, at Franklin in the County of Southampton to be used on behalf of Esther E. Gardner &c in a suit in chancery pending in the Circuit Court of said County wherein Henry Ashburn and wife and others are plaintiffs and the said Esther E. Gardner &c. defendants — Taken pursuant to the annexed notice —

The said S Lewes being duly sworn, answers & says as is set forth in the answers following

1st Question by John R. Kelly atto. for Esther E. Gardner, How old are ym, where do ym reside, and are ym acquainted with the land of which Geo H. Gardner died seized & possessed

Answer. I am 37 years old & live in Southampton County and live near the farm of the late George H Gardner — I am well acquainted with the farm, have been knowing near & adjoining it all my life —

2nd Question by same. Are you familiar with that part of the lands of Geo H Gardner and which were assigned to Esther E Gardner as her dower

Answer by Geo Vicks M. M.

Clayton and Salathiel Lewis- and in your judgment is the portion assigned by said Commissioners (of whom you were one) more than one third in value or not—

Answer. I do not think the portion assigned by my Gordon was more than one third— I did not think so then nor do I think so now.

Third Question by same— Describe the houses on said farm and what they would rent for in your opinion with or without land attached?

Answer— I think the dwelling house which is a good one and all the out-houses with the land assigned the widow as her dower would rent for $75— the houses alone would not rent for much— The six rooms on the remainder of said farm I rented for $20. ~~but would~~ at public auction, but I would have given $150. rather than not have rented it— Another party some month after the sale was knocked out to me went to the Commissioners, Mr. Allen Lowry and claimed the bid as his and asked that it be put up a second time, but having been knocked out the Commissioners declined to do so.

I Consider the five houses worth more than all the other houses on the farm

There are two other frame houses on the remainder of the land not included in the dower which rented last year (1872) for Eight dollars without any land attached, with land attached they would have rented for more

Fourth Question by Some - When the Commissioners assigned said dower was Mrs Allen present and if so did he say to the Commissioners in your presence or to you that the assignment was unreasonable

Answer - He was present a portion of the time but never made any such remark in my hearing

5th. Question by Some - What in your judgment would be an average yield of Brandy per Year from the orchard on the dower assigned to said Esther E Gardner

Answer - The orchard on the place is somewhat decayed on the dower part - but last year 1872 was tolerably good but year and the orchard made about two barrels of brandy I think therefore an average would be about one barrel as it but every other

year

Cross Examined by Genl Wm B Shands
Attorney for plaintiff.

First Question- What is the fee simple value of the whole real Estate of George H Gordon.

Answer- I think Two Thousand dollars would be a fair price for the whole of the real Estate

Second Question- What would the portion assigned the Widow as dower sell for in your opinion, in fee simple-

Answer- Situated as the place is, the remainder running all around it; I do not think it would sell for more than Six or Eight hundred dollars

3rd Question- What in your opinion would the remainder of the real Estate sell for ~~exclusive of~~ in fee simple not including the pension in the dower-

Answer- I think it would sell for about a thousand or Twelve hundred dollars-

And further this deponent saith not

S. Lewis

A. J. Stephenson being duly Sworn Saith

I am 55 years of age. I know the lands of George H Gordon Estate - I live near them and have so lived for over twenty years. I am acquainted with the land assigned Mrs Esther Gordon as her dower.

I think the dower assigned the widow would sell for from six to eight hundred dollars if sold in fee-simple - I think the remainder of the farm would sell in fee simple for twelve hundred dollars -

I think the whole farm, dower included with the usual credits would sell for Two thousand dollars if sold in fee simple. I think the dwelling and outhouses with the dower land attached (with the privileges of the orchard would rent for about sixty five or seventy dollars per year. I think the remainder of the farm with the six house and two other houses on the remainder would rent for about One hundred and sixty or seventy dollars a year.

I do not think the assignment to the widow by the Commissioners

are unreasonable/as for wheat there
are a number of houses on the
land assigned as her dower I think
they are of but little value or use
to the widow as the land assigned to
her being but little in quantity it
would require but a small sum
to outbuild it the product of
which being small in proportion.

And further this deponent
saith not

A. J. Stephenson

Elisha Lewis being duly sworn
saith.

I am well acquainted with
the lands belonging to the estate of
George H Gardner have been living
within a quarter of mile of it & knew it
last 40 years. for the
I am acquainted
with that portion assigned Mrs Gardner
as dower by the Commissions and
as for as the land is concerned I
do not think the assessment is
unreasonable. But there are more houses
than she has any use for many

nothing to put in them. I was with the Commissioners on the day they made the assignment & was near all the time. I walked around with them and showed them the line. I heard no remonstrance on that day on behalf of any of the heirs against the assignment of dower as made by the Commissioners. Mr Mc Atkinson, The Representative of the Estate seemed to insinuate that the dower was quite large. His exact words I do not remember. But one of the heirs at law to wit: Mr Ashburn was present. I think an average yield of brandy from year to year out of the orchard on the dower part would be about one barrel a year, judging from the quantity made last year, it being a good bit-year. The trees are now decaying very fast and in a few years I do not think they will be worth any thing.

And further this deponent saith not.

Elisha Sellers

Murdock & Clayton being duly
sworn saith

I am 48 years of age,
~~I~~ I live near the lands belonging
to the Estate of George H Gardner, and
have known the place for over Twenty
years. I am familiar with that
portion of the land assigned
Mrs Ethen Gardner by the Com-
missioners as her dower. I think the
assignment is not unreasonable,
I hardly think the Commissioners gave
her enough, being one of the Commissioners
myself. There are between thirty and
forty acres included in the portion
assigned Mrs Gardner Comparatively
worthless. And the woodland assigned
her has been annually scraped over.

I was notified to meet on a par-
ticular day specified by Mr Atkinson
the Representative, and accordingly
the Commissioners met and made the
assignment. No notice being given
to any of the heirs by the Commissioners,
but Mr Ashburne one of the parties
was present. Mr Ashburne on that
day asked me if I had ever acted

a Commissioner to assign dower before I told him I never had. but that I knew the duties of a Commissioner and intended to do what was right and if he was not satisfied he would have his remedy. I do not remember any remonstrance on the part of Mrs Atkinson, the Demandant, against the assignment on the ground that it was large. I Considered the portion of land assigned the widow including the dwelling and out houses would rent for about twenty dollars a year, and the remainder of the land including the six houses and six and two other houses ought to rent for about two hundred dollars a year. I think the remainder without the six houses ought to rent for one hundred and forty dollars. I Concur with Mrs Lewis & Stephenson, that the fee simple value of the whole place is about two thousand dollars. I think the dower part cut off as it is from the other part is not worth more than about six or seven hundred dollars in fee simple

The land running within about fifteen steps from the end of the dwelling house and about forty yards from the rear of the same. I think the remainder of the farm in fee simple would sell for twelve or thirteen hundred dollars. After hearing that deposition in this case in which the opinion was expressed that the Commissioners had given Mrs Gardner one half the land in value I then reviewed my action as Commissioner and concluded we had hardly given her enough. I considered the average yield of brandy would not exceed one barrel a year

And further this deponent saith not—

A M McClayton

Robert M Edwards being duly sworn saith

I have heard the deposition of Mr A J Stephenson and which I have not known the farm as long as Mr Stephenson but I concur with him

as to the balance of ~~Stated~~ facts Contained in his deposition

And further this deponent Saith not

W. H. Edwards.

James Bristow being duly sworn Saith

I have known the place or farm belonging to the Estate of George A Gardner for forty years, and I have heard the deposition of A J Stephenson read and Concur with him as to the facts Stated therein.

And further the deponent Saith not

James Bristow

State of Virginia
Southampton County To Wit
I. R. R. Griffin A Notary
public for the County aforesaid
and said State do Certify that
the foregoing Depositions were duly
taken, sworn to and subscribed before
me at the time and place mentioned
therein
Given under my hand this 8th
day of April 1873
R R Griffin N.P.

Notary fee $5.10
Witness present
and Examined attendance
S. Lewis 1 day.
M. M. Clayton 1 day and 3 miles over 10
Robert M. Edwards 1 Day 0 miles over 10
A J Stephenson 1 Day 2 miles over 10
James Braxton 1 Day 0 miles over 10
Elisha Lewis 1 Day 0 miles over 10

Ashum Wyche &
al
vs
Depositions

Gardners Adm &c

Came to hand sealed April
5 1873

Ashburn & wife
vs
Gardner's adm's
&
Gardner
vs
Gardner's adm's

Deeree

COPY

Executed by delivering
Esther E Gardner. Jno A
Straley & Jeremiah A
Gardner each a copy
of this decree on this
26th. day of April
1880

W W Breggs dft
A F Abbott Sol
W W Breggs dft

Southampton Circuit Court. November Term 1879.

Ashburn & wife, Plaintiffs
vs
Gardner's admr. Defendant
In Chancery

&

Gardner Plaintiff
vs
Gardner's admr. Defendant
In Chancery

On motion of John A. Hundley & wife these causes are ordered to be reinstated upon the docket, and they this day came on to be further heard on the papers formerly read & the petition of John A. Hundley & wife filed during the term and was argued by counsel. On consideration whereof the Court doth adjudge, order and decree that Esther E. Gardner, Jeremiah H, Emily A. Ruth & Paul Gardner, be summoned to ~~the March~~ term of this Court to show cause if any they can, why the Homestead which has been assigned them in the real Estate of which Geo: H. Gardner died seized should not be set aside

A Copy - Teste:

L. A. Edwards D.C.

Ashburn Wise &c
v. } Sci. fa.
Gardners admor &c

1873. November Cir. Ct.

Executed by delivering
to the within named
S. J. Hemmitt a true
copy of the within
Summons Oct. 8th
1873.

A. B. Edwards Shff

J. O. Wight

The Commonwealth of Virginia,

Isle of Wight

TO THE SHERIFF OF ~~SOUTHAMPTON~~ COUNTY--GREETING:

WHEREAS Henry Ashburn & Elmira F his wife who before marriage was Gardner & others

heretofore exhibited to our Circuit Court of Southampton County, sitting in chancery, their bill of complaint against Wm Atkinson administrator of George 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 Thomas J Clements has qualified as Curator of the estate of Wm Atkinson dec'd and administration on the estate of the said George H Gardner dec'd unadministered by the said Wm Atkinson has been Committed to the said Thomas J Clements in due form as we are informed

And the said Henry Ashburn & wife & others 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 Thomas J Clements Curator & admor as aforesaid

that he be ~~at the Clerk's office~~ before the Judge of our said Circuit Court, at the ~~rules to be holden for the said court of the first Monday in~~ Courthouse on the first day of the next term of the said court ~~next~~, 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 characters 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, ~~OSWIN WHITE~~ L R Edwards, Clerk of our said Court, at the Courthouse, this 24th day of September 1873, in the 98 year of the Commonwealth.

L R Edwards Clk

Ashburn Trustee

~~Gardner Admrs~~

vs

~~Adt~~ 3

~~Substituted as~~

Gardner's Admr. Sal

Amount of injunct

defendant

1872 September Rule

1

The answer of Ruth L and Paul Jordan two infants by L. K. Edwards their guardian ad litem appointed for that purpose to a bill in chancery by Henry Ashburn vs Otho Thurman vs Otho

This defendant for answer to the said bill or so much thereof as he is advised it is material for him to answer answering says that he knows nothing of the allegations of the plaintiffs bill but submits the interests of his wards to the care of this court whose peculiar duty it is to protect the rights of infants and having fully answered prays hence to be dismissed with his costs &c

Recieved by consent

Thanks for plaintiffs

Ashburner Ellis & Co

v

Sumt. Chy

Gardners adm Co

1872 September Rules

Executed.

A. T. Cobb Dy Sr

Wellington Shff

The Commonwealth of Virginia

To the Sheriff of Southampton County, Greeting:

WE COMMAND YOU to summon Wm Atkinson admor of George H Gardner dec'd Esther A Gardner & Ruth L & Paul Gardner infants

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 Henry Ashburn & Elmira his wife Thomas A McClenny & Dianna his wife & John A Hundley & Delia his wife & others

L R Edwards

And have then there this writ. Witness, ~~OSWIN WHITE~~, Clerk of our said Court, at the Courthouse, this 21 day of August A., D., 1872 in the 97 year of the Commonwealth.

L R Edwards Clk

Sun Job Print, Suffolk, Va

Esther E. Gardner

ats

Ashburnham

answer
of Mrs Gardner

See files in the
papers 1874

1873 May

The answer of Esther E. Gardner, to a Bill in Chancery exhibited in the Circuit Court of Southampton County by Henry Ashburn & wife & others, against her & others —

This Respondent says that her husband Geo. H. Gardner died as stated in said Bill, leaving the children as stated & herself as his widow, and that Wm. Atkinson became his administrator, who has sold the Chattel estate: That her said husband also died possessed of the Real estate named, and that her dower therein has been set apart to her as stated. That she had nothing to do with the appointment of the Commissioners who assigned said Dower — That Dower was assigned on the motion and at the instance of the children & heirs of said deceased. That Mr. S. Lewis acted as one of them at the special instance of Wm. Atkinson who was acting for the heirs

That the Devisees having received a larger share of the Real estate assigned for her Dower, than she ought to have received. That the gentlemen who assigned her Dower were said Intelligent & competent & well acquainted with the value of said Land & its surroundings — That the heirs at

law are estopped from complaining of want of notice when the commissioners met to assign Dower, because their action was at their own instance. That she denies that her claim for Homestead interferes in any way with her right to Dower. The Law has given both and she knows of no reason why she should not take it for herself & the Infant children of the deceased who have now to be raised, fed & clothed the other older children being able to take care of themselves. — That she says the facts set forth in Complainants' Bill are not sufficient in Law to open the proceedings, by which Dower was assigned her —

That the report of said Commissioners has been duly confirmed by the County Court on the motion of the heirs who had them appointed and having answered begs to be hence dismissed.

signed

Esther E. Gardner.

~~Southampton~~ ~~Hanover~~ County to wit:

I. S. Lewis a Justice of the peace in and for said County do certify that Esther E. Gardner, personally came before me & made oath that the facts set forth in the foregoing answer are true to the best of her belief.

Given under my hand this

5th of 1872

S. Lewis J.P.

Memorandum
for
Clerk

Memorandum for Clerk

Copy order to allot Esther E Jackson
down in J. H. Jackson estate A

And Report of J. W. Vick, M. M Clayton,
and Salathiel Davis alloting, dower and
order of court confirming same and
file in papers B

Ashburn wife &c. Gardner
vs & vs
Gardner's Adm'r Gardner's Adm'r

Petition of John A. Hundley & Delia, his wife.

In these causes, your petitioners respectfully shew as follows. That Geo W. Gardner, who was the father of your petitioners wife, at the time of his death left considerable real & personal estate - and that his estate was perfectly solvent. That by a decree made at May term 1873, Commissioners were appointed to assign to his widow, her dower - and to his said widow & his minor children a homestead. That the said Commissioners by their report, filed Aug 7. 1873, gave the whole of his real estate, as dower & a homestead to the widow & minor children. That since that time, it has been decided by the Court of Appeals of Va, & your petitioners is advised, that a widow & minor children are not entitled to claim a homestead except as against creditors - and therefore the said assignment of homestead ought to be set aside. Your petitioners therefore pray that these causes may be reinstated upon the docket. and the said Esther E. Gardner, widow as aforesaid, and the

following minor children of Geo H Gardner
(viz Ida, Emily A., Ruth & Paul Gardner)
died, may be summoned to the next
term of this Court, to show cause why
the assignment of the homestead to them
shall not be set aside.
and as in duty bound, your petitioner
will ever pray &c. May it please
the Court. Jno Attendly for Pet.
Nov 7. 1879 by J. B. Pence atty.

To Judge Cir. Ct.

Adm
vs
Gardner Admr.
&
Gardner

Petition of Jno A.
Attendly.

Nov 7. 1879

~~1873~~ 1875 & 1876

Ashburn Wilcox & Co

v } Stat. Rules

Gardners adm &c.

1873 Nov. Term

In Southampton Circuit Court.

Henry A Shivers & Elmira F. his wife who before marriage was Gardner. Thomas A McElenny & Diana his wife who before marriage was Gardner & John A Hundley & Delia his Wife who before marriage was Gardner, & Jeremiah A Gardner, Emily A Gardner infants who sue by John A Hundley their next friend

against.

Wm Atkinson administrator of George W. Gardner dec'd Esther E. Gardner. Ruth L Gardner & Paul Gardner the two last infants.

1872. Aug. 21st Summons issued

" Sept R. Sum. Ret'd Ex'd. Bill filed. L R. Edwards assigned Gr. ad litem to infant Defts. Ruth L & Paul Gardner. Ans. of infant Defts. Gen'l. Repl. D. Nisi. v Dft. Atkinson ad. & Esther E Gardner.

" Oct. R. Bill taken for Confessed vs Defts. Atkinson ad. & E. E Gardner. & Cause Set for hearing &c.

1873 May. Decree to assign Homestead & Dower

" Sept. 24. Sci fa to revive v. Thos J Clements Curator of Est. of Wm Atkinson & adm DB Non Geo A Gardner dec'd.

" Nov 7. Decree final &c

1879 Nov - Cause reinstated on Docket & Dfts to be Sum'd

1880 May - Former decree set aside & Decree to allot dower

1873 May

Pfeffer Costs — Clk	$ 5.19	
Shff	2 80	
J N Sibrell Com	5.00	
Law :°	16.00	$ 28.99

Defts Costs		
Clk	$ 1.70	
Sh	160	
K R Griffin	5.00	
Wit —	5.72	
Law	15.00	$ 29.02

Report of Comrs
allotting Dower
to
Esther E. Gardner

Filed
1881 April 4 [illegible]

To. Hon. Circuit Court of Southampton

We your Commissioners appointed at the May Term 1880 to allot Dower to Esther E. Gardiner widow of Geo. H. Gardiner did meet on the 6th Day of July & after viewing the premises proceeded to allot said Dower to Wit. We gave to the widow the yard & dwelling & out-houses contained therein, except the houses on the left including school-house & smoke-house the said houses to be moved if the heirs so elect: Also the houses on the left of the lane leading to the public road leading in the direction of Elisha Lewis's, & the land now held by her as dower, including the garden & running as the dower fence now runs, half it at right angles to the back fence of said garden: Except the out-houses on the lane leading from dwelling house, & the following land to wit:

A line to commence at the first house on the right side of the lane & running one hundred yards at right angles to the lane so as to include the houses on said lane & then to run parallel with the lane to outer boundary of said plantation, which shall belong to heirs of Geo. H. Gardiner other than the widow. The widow is to have

permission to cut & take such ties
for Rails & wood as they may
require for the use of said farm
as they may elect, on any part of
said farm.
All of which we most respect-
fully submit

Joshua Britton
W. F. Broadnax
L. C. Cobb
Elisha Lewis
Zachariah Boyd

Committee

Ashburn & wife
vs
Gardner's adm.
&
Gardner
vs
Gardner's adm.

Deere

COPY

Executed by delivering
Esther E Gardner & Jeremiah
E Gardner each a copy
of the Decree on the
1 day of December 1880

A H Bobbett D.C.
W D Dr by Shff

Southampton Circuit Court November Term 1879

Ashburn & wife, Plaintiffs
vs
Gardner's Admr: Defendants
In Chancery

&

Gardner Plaintiff
vs
Gardner's admr: Defendant
In Chancery

On the motion of John A. Hundley & wife, these causes are ordered to be reinstated upon the Docket, and they this day came on to be further heard on the papers formerly read & the petition of John A. Hundley & wife filed during the term and was argued by Counsel. On consideration whereof the Court doth adjudge order and decree that Esther E. Gardner Jeremiah H. Emily A. Ruth & Paul Gardner be summoned to the next term of this Court, to show cause if any they can, why the Homestead which has been assigned to them in the real Estate of which Jas: H Gardner died seized & owned, not be set aside

A Copy Teste:

L. R. Edwards C.C.

Ashburnes wife &
Gardners Adm.
&
Gardner
Gardners Adm

Dec

Nov Term 1879

To be entered.

Geo. Bond.

Ashburn wife &c
Gardner Admr
Gardner
" Gardner Admr

} Decree.

On motion of John A. Handley wife,
these causes, are ordered to be
reinstated upon the docket.; and
they this day came on to be further
heard on the papers formerly read,
& the petition of Jno. A Handley wife,
filed during the term and was
argued by Counsel. On consider-
tion whereof, the Court doth adjudge
order & decree that Esther E. Gardner
Jeremiah H, Emily A, Ruth & Paul
Gardner, be summoned to the
next term of this Court, to show
cause, if any they can, why
the homestead which has been
assigned to them in the real
estate of which Geo. W Gardner
died seized, should not be set aside

Ashburn & wife
v
Gardners adm^r.
&
Gardner
v
Gardner's admr:

Decree

Copy

Executed by delivering
to the Chancellor & Sheriff
Each Chancellor a copy
of the decree on the
1st day of December

A. H. Cobb D.C.
W. W. Driggs Sheff

Southampton Circuit Court November Term 1879

Ashburn & wife, Plaintiffs
vs
Gardner's admr. Defendant
In Chancery

&

Gardner Plaintiff
vs.
Gardner's admr: Defendant
In Chancery

On motion of John A. Hundley & wife these causes are ordered to be reinstated upon the Docket and they this day came on to be further heard on the papers formerly read & the petition of John A. Hundley & wife filed during the term and was argued by counsel. On consideration whereof the Court doth adjudge, order and decree, that Esther E. Gardner, Jeremiah H. Emily A. Ruth, & Paul Gardner be summoned to the next term of this Court, to show cause if any they can, why the Homestead which has been assigned to them in the real Estate of which Lyes: H. Gardner died seized, should not be set aside.

A Copy Teste:
L. R. Edwards C. C.

115. 116

Ashburner vs Gardner Adm.
+
Gardner vs Decree
vs
Gardner et al

May Term 1880

To be entered.

Geo. Black.

Ashburner & wife vs Gardner's Admrs
&
Gardner vs Gardner's Admrs

In Decree.

This day this cause came on to be again heard on the papers formerly read, and the answer of Esther E. Gardner and was argued by Counsel. On consideration whereof, and the Court being of opinion that Esther E. Gardner widow of George H. Gardner is not entitled to claim & hold a Homestead in the Estate of her late husband, it is adjudged ordered & decreed that the report of Commissioners filed Aug 7. 1873. assigning dower and a homestead to said Esther E. Gardner and the decree confirming said report, be & they are hereby set aside. And the Court doth further decree that ~~Wm. F. Bradshaw~~ W. F. Bradshaw, Elisha Lewis, L. C. Goldsborough, Joshua Rollins & Zacariah Doyle, be & they are hereby appointed Commissioners, any three of whom may act. That they assign & allot by metes & bounds to Esther E. Gardner, widow of Geo. H. Gardner dec'd, as & for her dower, one third in value of the real Estate whereof Geo H. Gardner died seized, having regard to quantity & quality. And the said Commissioners make report to Court.

Ashburn Snipe
vs.
Gardner's Admr. & al.
and
Gardner & al.
vs.
Same

These causes came on this day to be again heard on the papers formerly read and on the Report of Commissioners Joshua Pretlow, W. F. Bradshaw, L. C. Cobb, Elisha Lewis and Zachariah Doyle filed the 4th day of April 1881, being the Report of the assignment made by them of dower to Esther E. Gardner in the real estate of her late husband ~~deceased~~ George H. Gardner deceased in pursuance of the decree ~~of the~~ entered herein at the May term 1880 of this Court and was argued by counsel.

On consideration whereof the Court doth confirm the said Report to which no exception has been filed and doth adjudge, order, and decree that Thos. J. Clements Administrator of Geo. H. Gardner deceased pay the unpaid costs of these causes to be

taxed by the clerk of this Court, out of any estate of the said Geo. H. Gardner in his hands to be administered: and nothing more remaining to be done in these ~~cases~~ causes. it is ordered that they be removed from the docket.

Ashburn & wife
vs.
Gardner's Admr. &c

and
Gardner
vs.
Sawyer

Southampton County
Circuit Court
6 May 1884
Decree
To be entered
Gi. T. Wilson