1897- 20 Southampton County Chancery - Nicholson, Mary T. vs Nicholson, T.D. et als

Partition of real estate, if
can't be divided then it be
sold & money divided to parties
entitled.

{ Rawlings, A. Lee
a minor
by
Sebrell, J.N., Jr.
(G.A.L.)

Nicholson M. J.

vs. Bill.

Nicholson & others.

1896 3d March filed
L. A. Gaylord.

J. B. Pruett & K

JAMES L. McLEMORE,
Attorney-at-Law,
COURTLAND, VIRGINIA.

Everett Waddey Co., Stationers and Printers, Richmond, Va.

To the Honorable Robert R.Prentis, Judgeof the Circuit Court of Southampton County, Virginia.

In Chancery.

Complaining,showeth to the Court the following case: That your Complainant,Mary J.Nicholson,formerly Mary J. Rawlings,is seized in fee simple of an undivided one fourth interest in the tract of land formerly owned by J.H.Rawlings,now decd.,which consists of a tract of land containing by survey 145 acres,and situated near Carys bridge, adjoining the lands of the Children of John I Turner,and others,which said I/4 interest,she acquired by purchase from her daughter,Mattie A.Laine and husband,by deed dated February 27th, 1891,wherein was conveyed at the same time a one fourth undivided interest to the husband of your oratrix,J.D.Nicholson,which interest he now holds,subject, however,to the dower interest of your oratrix,as the widow of her first husband,J.H.Rawlings,(being one third in the entire farm) making the interest he now holds capable of present enjoyment,a I/6 of the entire tract. That the fee in the remainder of the said farm,is vested in your Complainant's son,A.Lee Rawlings,who is a minor,twenty years of age.

Your Complainant is advised that she has the right to have her share of the said farm cut off to her in kind,or if that proves impracticable then that the same be sold and the interest of each paid to them as their interest may appear,she believes it would be unwise to have the land divided in kind considering the several interests,and the situation of the farm,but if the same can be done,she desires it to be divided,and if not, then that it be sold,as the statute in such cases has provided.

In tender consideration whereof,and forasmuch as your complainant is remediless in the premises save by the aid of a court of equity,where matters of this kind are alone and properly cognizable,your complainant prays that the said J.D.Nicholson,and A.Lee Rawlings may

be made parties defendants to this bill and required on their oaths to answer the same; that a proper guardian ad litem may be appointed for the infant defendant, to protect his interest in this suit, who shall also answer this bill; that if the same is practicable the real estate be partitioned in kind, and your orators portion allotted to her, and in case the same cannot be conveniently divided in kind, then that the same be exposed to sale and the proceeds of such sale be divided among the parties entitled thereto; that all proper orders and decrees may be made, and proper enquiries directed, and that all such other, farther and general relief may be afforded your complainant as the nature of her case may require or to equity may seem meet. Notice is hereby given that the Court will be asked to allow reasonable fees to Plaintiffs Counsel, conducting this cause, out of any funds coming under its control. And your complainant will ever pray, &c.

Prince & McLemore P.Q.

Everett Waddey Co.,
Stationers and Printers,
Richmond, Va.
Form No 17.

Nicholson

against Answer of J.D. Nicholson

Nicholson et als.

To ..... *Rules, 189* .....

JOHN N. SEBRELL, JR.,
ATTORNEY AT LAW,
COURTLAND, VA.

Nicholson

vs. Answer of J. D. Nicholson.

Nicholson et al.

To the Honorable Robert R. Prentis, Judge of the Circuit Court of Southampton County. In Chancery:

The answer of J. D. Nicholson to a bill in equity exhibited against him and others in the Circuit Court of Southampton County by Mary J. Nicholson.

This respondent, saving and reserving to himself the benefit of all exception which may be had or taken to the said bill, for answer thereto or to so much thereof as he is advised it is material for him to answer answers and says, that true it is that the complainant, Mary J. Nicholson is seized in fee-simple of an undivided one-fourth interest in the tract of land in the bill mentioned, and that this respondent is seized in fee-simple of an undivided one-fourth interest in said land, subject to the dower interest of the complainant, that is to say, that the complainant (who is the wife of this respondent) and this respondent purchased from Mattie A. Laine and her husband, by deed dated February 27th I89I, the interest of the said Mattie A. Laine and husband in the said tract of land, which said interest is an undivided one-half of the entire tract, subject to the dower interest of the complainant, and which said interest is now jointly owned in fee by the complainant and this respondent; that the said complainant and this respondent are therefore jointly seized in fee of an undivided one-half interest, and that A. Lee Rawlings is seized in fee of the other one-half interest, all subject, however, to the dower interest of the said complainant.

This respondent here positively and emphatically avers and states that partition of the said land in kind can be easily and conveniently made, with fairness and justice to all partiesand with injury to none;

and he here positively and emphatically says that his rights and interests would be greatly and seriously violated and injured if the entire tract of land, including his interest therein, should be sold. This respondent desires, and prays the Court, that his interest in the said land may not be sold, as it is the only real-estate which he possesses and he desires to keep this as a home for himself, and if a sale should now be made, he believes, and here states that his interest would not bring anything like its worth.

Notice is hereby given that the Court will be asked to allow reasonable fees to defendants counsel in this cause, out of any funds coming under its control.

And now having fully answered the complainants bill, this respondent prays hence to be dismissed with his reasonable costs &c. And he will ever pray &c.

Jno. N. Sebrell Jr. p.d. J. D. Nicholson

Virginia

Southampton County, towit:

I, Jno. N. Sebrell Jr. a notary public, in and for thw county and state aforesaid, do hereby certify, that J. D. Nicholson, whose name is signed to the foregoing answer, has this day appeared before me in my said county and state and made oath that the statements therein contained, so far as made of his own knowledge ~~is~~ are true and so far as made from information derived from others he believes to be true. Given under # my hand this 22 day of March 1897

Jno. N. Sebrell Jr.

Notery Public.

COMMISSIONERS' SALE OF VALUABLE REAL-ESTATE

By virtue of a decree of the Circuit Court of Southampton County entered on the 23rd day of March 1897 in the chancery cause of Nicholson vs. Nicholson et al. therein depending, the undersigned commissioners , will offer for sale by PUBLIC AUCTION, at COURTLAND, VA. on MONDAY the 19th day of APRIL 1897 (court-day)the tract of land mentioned in said suit, namely: that certain tract or parcel of land formerly owned by J.H.Rawlings, deceased, adjoining the lands of the children of John I Turner, and others, containing by survey 145 acres, and being the same land now owned by J.D.Nicholson, M.J.Nicholson, and A.Lee Rawlings.Same to be sold, however, subject to the dower interest therein of M.J.Nicholson.

TERMS:- One-third of the purchase money in cash,remainder thereof in two equal installments payable in one and two years, carrying interest from day of sale,with title to be retained till all the purchase money is paid,option being given to the purchaser to pay the entire purchase money in cash and take a deed upon the confirmation of the sale by the Court.

J.L.McLemore)
J.N.Sebrell Jr.(Special Commissioners
)

Mary J.Nicholson————Plaintiff
against (In Chancery.
J.D.Nicholson and A.Lee Rawlings---Defendants

I,L.A.Gay,Clerk of the Circuit Court of Southampton County,Virginia do certify that bond as required under a decree of sale in the above style cause,entered on the 23rd day of March 1897,has been executed with security deemed sufficient by me. Given under my hand this 30th day of March 1897

L.A.Gay C.C.

Nicholson M.J.

vs. Report of Sale.

Nicholson J.D. et al

1897, 28th April. Filed.

Circuit Court Southampton County.

Nicholson M.J.

against. Report of Sale.

Nicholson &others.

The undersigned Commissioner appointed at the March term 1897 of the Circuit Court for Southampton Co. in the above mentioned cause to make sale of the real estate in the Bill mentioned, containing 145 acres, by survey, known as the J.H. Rawlings place., said form being said subject to the Widow's dower therein of Mrs M.J. Nicholson. beg to report that after duly advertising the time, terms and place of Sale for at least 30 days, the said property was exposed to sale at Courtland Va. on April 19th. 1897. at which sale A. Lee Rawlings became the purchaser, by bidding therefor the sum of Sixteen Hundred and Seventy $^{50}/_{100}$ Dollars ($1670.^{50}) and has expressed a desire to pay for the same in cash & take a deed. Your Commissioner think the sale a good one, and respectfully recommends that it be confirmed.

April 20. 1897.

Respectfully Submitted
Jas. L. McLemore

Wr acknowledge due thigh service
of this notice. J. L. McLemore atty for.
A. Lee Rawlings.
Jno. H. Brue Jr.
atty for J. D. Nicholson

To:

J. D. Nicholson and A. Lee Rawlings.

Take notice that I shall through my Counsel apply to the Hon. Robert R. Prentis, Judge 5th Circuit Court of Southampton, at his Office in Suffolk Va. on April 28th. 1897. for a decree to be entered in Vacation in the Chancery Cause of Nicholson M.J. vrsus. J.D. Nicholson and A. Lee Rawlings.

April 17. 1897.

M. J. Nicholson, by
Counsel.

Nicholson M.J.
v. 3 Reports
Nicholson J.D.C.

1896. April 28th.

In the Circuit Court for Southampton County.

W. J. Nicholson.
against. Report of Commissioners.
J. D. Nicholson & A. Lee Rawlings,

The undersigned who were appointed at the Master Term 1897 of the said Court, respectfully report that after duly advertising the time, terms and place of sale in accordance with the requirments of the decree of March 23rd 1897 entered herein, exposed the tract of land in the bill mentioned, containing 145 acres, more or less to public sale at Courtland on Monday April 19th. 1897. (County Court day) at which sale A. Lee Rawlings became the purchaser by bidding therefor the sum of $1670.50, that being the highest bid, and is ready to pay the entire purchase money in cash and take a deed upon the confirmation of the sale by the Court. Said farm was sold subject to the widows dower interest in about 20 acres which has been set aside by Commissioners and includes the dwelling house, a report of which has been duly returned to and confirmed by the County Court.

April 17/1897.

Respectfully Submitted
Jas. L. W. Lemon
Jno. K. Powell Jr.

Mary J. Nicholson ..... Plaintiff...

AGAINST

J. D. Nicholson & A. Lee Rawlings ..... Defendant...
L. A. Gay

} IN CHANCERY.

I, ~~T. M. HOWARD~~, Clerk of the Circuit Court of Southampton County, Virginia, do certify that bond as required under a decree of sale in the above style cause, entered on the 23rd day of March 189 7, has been executed with security deemed sufficient by me.

Given under my hand this 30th day of March 189 7

L. A. Gay C. C.

Form No. 309.

Nicholson

vs

Nicholson et als.

Jas. L. McLimore

to } COMMISSIONER'S BOND.

Commonwealth.

1897. March 30th Filed.
L. A. Gay C. C.

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 309.

Know all men by these Presents, That we, James L McLemore
My J B. Prince

are held and firmly bound unto the Commonwealth of Virginia, in the sum of Two Thousand
Five hundred Dollars,
to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our Homestead Exemptions as to this obligation, and any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office, post or trust, with coupons detached from bonds of this State. Sealed with our seals, and dated this 30th day of March one thousand eight hundred and ninety 7.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound Jas. L. McLemore
shall faithfully perform the duties of his office or trust, as Special Commissioner
under a decree of the Circuit Court of the County of Southampton
pronounced on the 23rd day of March, 1897, in the suit therein depending under the name and style of Nicholson vs Nicholson et als.
and of any future decree which may be entered in said Cause

then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and acknowledged in the presence of

Jas. L. McLemore SEAL.
J. B. Prince SEAL.
SEAL.

In the Clerk's Office of the Circuit *Court of the* County *of* Southampton.

This day J. B. Prince
surety on the above bond, made oath before me, L. A. Gay Clerk
of the Circuit Court of the County of Southampton
that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expect to have to pay, is worth the sum of Twenty five hundred dollars.

Given under my hand this 30th day of March, 1897.

Teste: L. A. Gay Clerk.

Form No. 309.

Nicholson

Vs.

Nicholson et als.

Jno. N. Debree Jr.

to } COMMISSIONER'S BOND.

Commonwealth.

1897. Mch. 29th. Filed

L. A. Gary C.C.

Everett Waldey Co., Stationers and Printers, Richmond, Va. } Form No. 309.

Know all men by these Presents, That we, John N. Sebrell Jr. and Jas. E. Sebrell are held and firmly bound unto the Commonwealth of Virginia, in the sum of Two Thousand five hundred Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our Homestead Exemptions as to this obligation, and any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office, post or trust, with coupons detached from bonds of this State. Sealed with our seals, and dated this 29th day of March one thousand eight hundred and ninety Seven.

The Condition of the above Obligation is such, That if the above bound John N. Sebrell Jr. shall faithfully perform the duties of his office or trust, as Special Commissioner under a decree of the Circuit Court of the County of Southampton pronounced on the 23rd day of March, 1897, in the suit therein depending under the name and style of Nicholson &c Nicholson et: als: and of any future decree which may be entered in said Cause

then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and acknowledged in the presence of

John N. Sebrell Jr. SEAL.
James E. Sebrell SEAL.
SEAL.

In the Clerk's Office of the Circuit *Court of the* County *of* Southampton.

This day James E Sebrell surety on the above bond, made oath before me, L. A. Gay Clerk of the Circuit Court of the County of Southampton that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expect to have to pay, is worth the sum of Two Thousand Five hundred dollars.

Given under my hand this 29th day of March, 1897.

Teste: L. A. Gay Clerk.

Nicholson M.J.

Nicholson J.D. et als.

This day this cause came on again to be heard upon the papers formerly read and upon the report of Commissioner Sharpe filed March 6t. 1897, to which exceptions were

Nicholson M.J.

v.

Deeree

Nicholson J.D. et al.

In the Court as aforesaid, and coming on to be heard upon the papers formerly read and upon the report of Commissioner Sharpe filed March 6t. 1897, to which exceptions were

Ended Page 131

cp

and the same being argued by counsel. On consideration whereof it is ordered, adjudged, and decreed as aforesaid, and coth over rule the said exceptions and confirm the said report, and do adjudge, decree and decree that I.M.Nicholson, Commissioner, do be and they are hereby appointed special Master to sell the lands described in said report and decree, to-wit: [illegible] and the following described lands, to-wit: [illegible] and upon the following terms: One [illegible]

Robert R. Harris

March 2

1897

Nicholson M.J.

vs.

Nicholson J.D. et als.

This day this cause came on again to be heard upon the papers formerly read and upon the report of Commissioner Sharpe filed March 6t. 1897, to which exceptions were

the price and money in cash, remainder in two equal installments payable in one and two years, carrying interest from day of sale, with bible to be retained till all of the purchase money is paid, option being given to the purchaser to pay the entire purchase money in cash and take a good upon the confirmation of the sale by the Court.

It before the said Commissioners shall proceed to sell Master the said lands, to-wit: [illegible] ner, they shall enter into bond before the Clerk of this Court, [illegible] penalty of $2500., conditioned for the faithful discharge of this or any future decree that may be entered herein.

Nicholson M.J.

VS.

Nicholson J.D. et als.

This day this cause came on again to be hard upon the papers former-ly read and upon the report of Commissioner Wm. Shands filed March 6th. 1897, to which exceptions were [redacted] by J. D. Nicholson, reporting the inexpediency of a division of the land in the bill mentioned, in kind, and was argued by Counsel. On consideration whereof the Court doth over rule the said exceptions to the report as aforesaid, and doth confirm the said report, and doth adjudge, order and decree that J.N. sebrell Jr., and J.L. McLemore, be and they are hereby appointed special Commissioners, to make sale of the land in the bill and proceedings mentioned, after having duly advertised the time terms and place of sale, for 20 days and upon the following terms: One third of the purchase money in cash, remainder thereof in two equal installments payable in one and two years, carrying interest from day of sale, with title to be retained till all of the purchase money is paid, option being given to the purchaser to pay the entire purchase money in cash and take a deed upon the confirmation of the sale by the Court.

at Courtland Subject to the dower interest therein of M.J. Nicholson,

But before the said Commissioners shall proceed to act hereunder, they shall enter into bond before the Clerk of this Court in the penalty of $2500. conditioned for the faithful discharge of this or any future decree that may be entered herein.

The excetions of J.D.Nicholson one of the defendants in the chancery suit of Nicholson vs. Nicholson et al.pending in the Circuit Court of Southampton County, to the report of Commissioner William Shands filed in the said suit on the 6th day of March 1897.

This exceptor comes by his attorney and excepts to said report on the following grounds and for the following reasons, towit:

First, that as to the statement of said commissioner in said report that "M.J.Nicholson and A.Lee Rawlings are willing to take the entire subject matter at the rate of $1800. or will sell their respective share to J.D.Nicholson at the same rate, but he (J.D.Nicholson) declines to sell them his share at that rate or to buy from them at their rate" This exceptor ,excepting,says that such statement is not supported by the evidence returned with the said report as the basis thereof, and that as a matter of fact they do not offer him at the rate of $1800 for his share, and that they have never offered him their respective shares at any price.

Second, that the said report that the said land cannot be conveniently divided in kind among the parties entitled thereto, is not supported or sustained by the evidence that is returned as the basis of said report, but that,on the contrary, is at variance therewith. Four witnesses are opinion that the said land can be conveniently divided and four do not think so, while one states that he knows nothing about it. This exceptor says that if he had known that the said commissioner would be influenced in his opinion and report by the number of deponents on either side, he could have and would have brought a far greater number who believe that the said land can be conveniently divided in kind and without injury to any of the parties, and indeed if that is to be the test no litigant could be satisfied until every citizen should have been called to testify. The said report in this particular is contrary to, and at variance with, the facts.For these and divers good causes and

reasons which will be duly shown to the Court, he prays that the said Report be not confirmed, but that commissioners be appointed (including the County Surveyor if necessary) to divide the said land among the parties entitled thereto, and if the same could not be conveniently divided to expose the same to sale by public auction.

And this exceptor will ever pray &c. May it please the Court &c.

J.W.C. Lewis Jr.
Counsel for exceptor.

J.D. Nicholson,
By Counsel

Nicholson

v } Spa

Nicholson

1897. 1st day March

Executor

J. M. Williams

Sheff

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON N B. Simmons. W. Bass. Jesse L. Cobb

to appear before the Judge of our County Court of Southampton County, at the Courthouse thereof, on the 1st day of March, 1897, to testify and the truth to speak on behalf of

in a certain matter of controversy in our said Court depending and undetermined between M. J. Nicholson, plaintiff, and J. D. Nicholson & als, defendant,

And this ye shall in no wise omit, under the penalty of the law. And have then there this writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this 25 day of Feby, 1897, in the 121 year of the Commonwealth.

TESTE: B. F. McLemore, C. C.

Nicholson

vs } Spa

Nicholson

~~1897 Febry~~

1897 March 1st

Executed

J. W. Williams

Sh'ff.

Shff fees in

Amr. Court

$2.50

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON — E. F. Brooks, Jno. Simmons, J. J. & S. Pearce, Jno. A. Standley

to appear before the Judge of our County Court of Southampton County, at the Courthouse thereof, on the 1st day of March, 1897, to testify and the truth to speak on behalf of

in a certain matter of controversy in our said Court depending and undetermined between Nicholson, plaintiff, and Nicholson, defendant,

And this they shall in no wise omit, under the penalty of the law. And have then there this writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this 23rd day of Febry, 1897, in the 121st year of the Commonwealth.

TESTE: B. F. McLemore, C. C.

Nicholson

v.

WITNESS'
SUBPŒNA.

Nicholson

1897. Feb: 20"

Executed

J. W. Williams

Sheff

"

Everett Waddey, Stationer and Printer, Richmond, Va. } Form No. 401.

The Commonwealth of Virginia,

To the Sheriff of the County of Southampton, Greeting:

You are hereby commanded to summon Jno. I. Turner. N. B. Simmons. Jesse L. Cobb. E. F. Reese and M. A. Gray

personally to appear before the undersigned, one of the commissioners in chancery of the Circuit Court of the County of Southampton, at his office, at the court-house of said county, on the 20th day of February 1897 ~~next,~~ to testify and the truth to say in behalf of M. J. & J. D. Nicholson & als

in a certain matter of Chancery suit

referred to the said commissioner for report, by a decree of the said court in a suit in chancery therein pending between M. J. Nicholson & J. D. Nicholson & als:

And this writ shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, B. F. McLemore, Commissioner of the said court, at the court-house of said county, the 6th day of February 1897, and in the 121 year of the Commonwealth.

B. F. McLemore, Com'r.

Nicholson
v. } Notice
Nicholson

1897. Feb. 20.

Executed
J. M. Williams
Sheff

We acknowledge the service of this notice this day of Feb. 1897.

of the within named

Commissioner's Office,

Courtland ~~Jerusalem~~, Va., Feb 6" 1897.

To M. J. Nicholson. J. D. Nicholson

& S. Lee. Rawlings.

You are hereby notified that I have fixed upon the 20" *day of* February 1897 ~~next~~, *if fair, if not, the next fair day thereafter (Sunday excepted), to take and settle, at my office, the following accounts, to wit:*

Whether or not the land in the bill mentioned can be conveniently divided in kind among the parties entitled thereto, after the widow's dower has been assigned to her

required to be taken by a decree of Southampton Circuit Court, rendered at the September *term, 1896, in a suit in chancery depending in said Court, in which you are parties, plaintiffs and defendants; at which time and place you are required to attend.*

Given under my hand, as Commissioner in Chancery of said Court, the day and year first aforesaid.

B. F. McLemore

Commissioner.

To the Sheriff of Southampton County to execute.

J. B. LIPPINCOTT COMPANY,
Booksellers and Stationers,
Philadelphia, Pa.

#1

The evidence taken by the Commissioner in the case of Nicholson vs Nicholson et al which is the foundation upon which his opinion is based. Said evidence was taken pursuant to notice legally given and in the presence of Primrose & Lemon, Attorneys for plaintiff and J. N. Sebrell Jr. Attorney for defendant.

Taken at Courtland Va. Monday March 13th. 1897.

(Defendants Witnesses)

The witness E. F. Reese being first duly sworn deposes and says as follows

Q 1 What is your age, occupation & where do you live & do you know the parties to this suit

A 1. Live at Sebrell Va. own land in controversy. am 52 yrs old & am a former & know parties to this suit

Q 2 State whether or not you are well acquainted with the situation & location of the land in the bill mentioned

A 2 I have never been all around the line, but know pretty much how it runs

Q 3 State whether or not you have been upon the land in question with a view of ascertaining whether the same could be divided in kind

A Yes I would there was. before the dower had been cut off

Q State whether or not the land can be divided in kind among the parties entitled thereto

A I think it lies as well as any piece I ever saw to divide

Q What do you mean by that? I mean your above answer.?

A It any piece can be divided in kind that can. Jeff could take his part off either end

Q Would the interest of any of the parties be violated or injured by a division in kind?

A It is best to sell the whole thing together; taking the dower out has injured it

Q Do you mean by that it would be better to sell the land exclusive of the dower than it would be to divide it?

A It would be better to divide?

Q Then when you said that it would be best to sell the entire tract

J. B. Lippincott Company,
Booksellers and Stationers,
Philadelphia, Pa.

did you mean dower and all?

A Sell it all. dower and all

2 Would the interest of any party be injured or made less valuable by a sale of the entire property for the allotment of dower.?

A I think so

2 whose interest?

A Jeff Nicholsons

2. If the property were sold now. would it you think bring its true value?

A I think it would not

2 what do you consider a fair value for the farm subject to the dower?

A I would like to answer that for I think it worth very little

Cross examination by pltffs counsel

2 when you say you think it would sell for very little with the dower interest in it do you not mean that you do not think any plow

will sell for very little with a dower interest in it?

a None of them would do it. I think that would sell for less than any piece I know with the dower interest in it.

q Do you know where the dower lies and its boundaries?

a Yes I ought to know I was one of the ones who assigned it

q When you say that you think the interests of the parties would be promoted by a division & not sale are you not thinking of the interest of Jeff. Nicholson as being promoted and not the others?

a No

q You think it would promote the interests of all parties do you?

a No it would benefit others to sell it but not Jeff. would cut him out because
q it would not bring anything?

q How many shares would the property have to be divided into and what would be the several interests of the parties?

J. B. Lippincott Company,
Booksellers and Stationers,
Philadelphia, Pa.

a Those shares. Jeff owns one sixth and the other parties own the balance. and he ought to own a share in the dower also

2 If in a division of the property Miss Nicholson's share had to be cut off to her and her son's also seperately do you think it could all be cut off in seperate shares without injury to the interests of the parties?

a as much so as any other form that size

2 Do you know how many acres this farm contains?

a 140 ~~odd~~ acres I think—don't know exactly

2 I understand you to say that could be more easily divided now since the dower interest has been assigned than before Is that right?

a No I did not so state

2 Could it be or not?

a No; not easier

2 How many acres does the dower

contain?

A I dont know. estimated between 20 & 30 acres

Re examination by dfdts atty

Q Of the shares of Mr J. Nicholson & a Lee Rawlings were cut off together would they not sell for as much as their share of the entire property would be, if all were sold. except the house?

A Yes

Adjd to by pltffs atty as reading

Re cross examination by pltffs atty

Q How do you know what you have stated to be true?

A I dont know.

and further this deponent sayeth not

Signed E. H. Reece

The witness J. A. S Pearce being first duly sworn deposes and says as follows

Q Tell where you live, your age, occupation & do you know parties to this suit?

J. B. Lippincott Company,
Booksellers and Stationers,
Philadelphia, Pa.

a am 52 yrs old. live at Pope. former
1 & know parties to this suit

2

2 3 You have heard Wm & J. Reese's evidence
4 given here to day in this case
5 do you concur in it or not?

6

a 7 yes Sir I do. So for as knowing
8 about the doors I dont know
o 9 anything about that as it has
10 been cut off since I was
11 over there.

12

2 13 Have you been upon said land
14 with a view of ascertaining whether
15 it could be divided or not?

16

a 17 I have and think it can be divided

18

19 Cross examination by Plaintiffs Atty

20

2 21 How much land do you own?

22

a 23 none.

24

2 25 When you say you concur with Wm
26 Reese in what he has said, you
27 only mean as you saw the land
28 before the dower was assigned do you
29 not?

30

a 31 I mean I was speaking of it
32 as it was before the dower was cut
33 off. I dont know where the dower is
laid. J. A. D. Pearce

The witness J. W. Simmons being first duly sworn & deposes and says as follows

I am 52 yrs old. I live in Douchompson Co am former & known parties to this suit

Q State whether not in your judgement the land in the bill mentioned is susceptible of partition in kind among the parties thereto?

A Yes Sir, I think it is

Q Are you well acquainted with the situation and location of the land?

A Yes sir I have been knowing the place ever since I was small. I dont know just where the lines runs

Q State whether or not in your opinion the rights of any party would be injured or violated by a sale of the entire tract subject to the dower?

A I think it would

Q State whether or not if the share of the defendant J. D. Nicholson was cut off to itself and the shares of the other two parties - M. J. Nicholson & a Lee Rawlings were cut off together

1

The shares of Mr J. Nicholson & a Sec Rawlings so cut off together would sell for as much as this share in the proceeds of the sale of the entire tract would be?

a I cant tell about that sir I dont know.

2 Would the property if sold now bring its true value?

a I hardly think it would

Cross exam by Pltffs atty

2 It's price would depend very largely upon the time upon which it was sold wouldnt it.

a well I reckon that would have a good deal to do with it sir

2 Do you know where the dower lies?

a No sir. I hoont been there sind It was cut off

q Then your opinion as expressed in your examination in chief was based upon your idea of the farm as a whole and not with the dower cut off wasnt it?

a yes. Sir for I hoont been there sind. but I think it can be divided to a better advantage than it can be sold.

q If land were selling well at this time wouldnt you think it better to sell it than to cut it up?

a Well I cant tell you of that. but even if it were selling well I think the way it is cut up it wouldnt sell as well or for as good price. I mean ~~took~~ selling subject to the widows taking

the widow's power out it would be better to all parties to divide it. I think if they could sell both the lower and upper the entire piece as it stands it would be better for all parties

2 Q Mrs M. J. Nicholson's share was cut off and each of the other shares cut off seperately & sold seperately do you think they would bring more or less than the property would bring if sold together?

a I can't tell. But think they would sell equally as well. I would rather buy that way. I mean divided

2 Do you think that the value of any form would be promoted by a sale instead a division regardless of the number of shares that might be in it?

a Well I don't know, it depends on circumstances

2 If this property were to be divided instead of sold. do you know how many shares it would have to be divided into & what proportion each party would get?

A Between two. except widows dower. I think they say it would be so. I dont know. how exactly how many there are. I dont know what proportion each party would get

Re exm by defdts counsel

2 If the interests of the parties were as follows. 1/4 in M.J. Nicholson. 1/4 in J.D. Nicholson & 1/2 a Lee Rowlings. all subject to the dower of M.J. Nicholson would you still think it susceptible of partition in kind?

A I reckon it is so

2 By Comr what is a fair value of the land outside the dower in it?

#4

a I dont know Sir

Signed J.W. Simmons

The witness Jno. A Hundley being first duly sworn deposes and says as follows

I am 63 yrs old. am farmer. live in Southampton Co Va & know parties to this suit

2 State whether or not the land in controversy can be conveniently divided in kind among the parties entitled thereto

a I think it can

cross exd by Pleffs atty

2 Do you know how many shares and the quantities of each one in the land?

a No more than what I have heard

Q Do you know the boundaries of the farm & of the house and if so when were you around the same?

A I know only what I have been told

Q Is that all that you have stated is based upon hearsay?

A I suppose so.

Re-sworn by defendants atty

Q Have you ever been upon the land and know its location

A I have been on it and

Signed John A Sturdy

The witness W.H. Gray being duly sworn deposes and says as follows
am 25 yrs old - live in South

employed by, or former known parties to this suit

2 The bill states that interests of the parties in the land in controversy are as follows. 1/4 to wit J. Nicholson. 1/4 wit J. D. Nicholson. & 1/2 wit A. Lee Boulware all subject to the dower interest of M. J. Nicholson. please state whether or not in your judgement the said land can be conveniently divided among the said parties according to their said interests above named

A. I didnt think or before the dower was assigned and since have seen the form and dont know any thing about it

Cross examination by pltffs atty

2 From the boundaries of the dower as appears in the Commissioners report assigning the same said

report being shown witness) would
you or not say it is harder to divide
now than ~~it~~ it was before
the dower was cut off

A I think it could be divided
equally as well now as before
but I have not seen it since the
assignment of dower and
dont know anything about
it

Re exm by dfdts atty

Q after the assignment of dower
as shown in the said Comrs
report do you not think
it would promote the interest
of the defendant J. D. Nichol
son to have a division
of the land

A I dont know as it would

Q (By court)
What is a fair value of land
with the dower in it?

A about $15 or $20

Signed W. H. Gray

X 5t

Plaintiffs witnesses

The witness Jno I Turner being duly sworn & deposes and says as follows

am 55 yrs old. am former. live in Southampton Co Va & am adjoining farm & know parties to this suit

Q Do you think it practicable to divide the land in controversy in kind among the parties according to their several interests?

A I dont think it can be done for one part of the farm is very good land and the other part very poor land. I know the farm well. have been knowing it for 27 yrs. it is right joining me

Q Do you think it will be to the interests of all the parties to have a sale & division of the

proceeds among them according to their rights or would their pecuniary interests be advanced by a division of the land in kind?

a It seems to me the fairest way would be to sell it and divide the money among them according to their rights.

I really think it would bring more to sell it than divide it.

2 Do you know where the dower is located & if so is it easier or more difficult to divide it now than it was before the dower was assigned?

a I do know where the dower is located, was one of the Comrs to allot it. I dont think it any harder to divide it now than it was before. hard matter to divide it any how.

Cross exam by Mr Stanley

Q. Is your only reason for stating that you did not think it practicable to divide the land in kind the fact that some of the land is rich & some poor?

A. My main & particular reason is the way the land lays building & all considered a portion of the land is very poor not with buildings but very good.

Q. If the land was of equal fertility would you not think it divisible in kind?

A. If it was all of equal fertility it might be divided.

Q. Then could not a fair division be made by giving more land to the party who got the more poor land?

a I think it would be a very difficult matter as a portion of the land is very dry and the other part has a good subsoil

2 Could it not be so divided that each party would get some of both poor & rich land?

a It might be done by cutting a little strip across the farm

2 If the share of J. P. Nicholson should be allotted to him and the residue thereof sold would not such residue if sold bring to the parties entitled thereto as much as would be their share of the proceeds of a sale of the entire tract exclusive of the dower?

a no sir & as I aforesaid said I dont

think that any small farm cut off + sold would bring as much as if it were sold together

2 Do you not think that the interests of some of the parties would be violated or injured by a sale of the entire land

a I ~~really think~~ do not

By Comr 2 What is the value of the farm subject to the dower?

a $1200—

Signed Jno. D. Turner

J. L. Cobb being duly sworn deposes and says as follows

I am 44 yrs old. former knows parties to suit. have lived in 1½ miles of place until 13 yrs ago and now live in one mile of it

2 Could the property in controversy, in your opinion be conveniently divided in (allowing the parties entitled thereto without injury to the interests of any party?

a I dont think it can be divided so as to give each party his proportionate part

2 Do you think all parties would be more benefitted by a sale of the entire property than they would by having it divided?

a I think the property would sell for more than it would be; to be cut up

2 Do you know well the boundaries and location of the property?

a I think I do, I possession of it,

Q about how far from this farm does Mr Hundley, Mr Pearce, Mr Simmons (J W) & Mr Reese live?

A Mr Hundley 2½ miles — Mr Pearce 6 miles J. W. Simmons 3 miles of it & Mr Reese 2½ miles

Cross exam by defts atty

Q Could not an allotment of the share of J. D. Nicholson to him & sale of the residue be fairly made and without injury to any of the parties?

A I think sir it would be well more as a whole

Q Do you think that the land would bring its true value if sold now for cash?

A I think the land would sell for its value if sold now

Q What do you mean by its value?

A I think the land is worth $8 or $10 pr

for ever and would sell for that now

2 The land could be easily divided between the parties having regard to the quality in giving quantity could it not?

a I think it would be matter of impossibility to do so to divide it equally

2 What would prevent an equal division?

a I dont think owing to how the land lies. the lower having most of the good land and south the poor land lying & being behind the lower

2 If the land were of equal fertility could it be conveniently be divided among the parties entitled thereto,

a I think not.

#7

Q Why?

A The land that has the building all on one part of it and I don't think any three men in the country could do it.

Q Then could any land with the buildings on it be divided?

A Yes sir. a piece larger could be divided. a tract of 1000 acres could be

Q Could a tract of 145 acres be?

A Not situated as this tract is

Q What is the peculiarity about this land that prevents it?

A I have already answered it. two power is located. quality of land- way rail timber is located not every bit of rail timber is in one corner of it

2. Is it not a fact that there is a strip of pine timber around almost the entire farm?

a No sir.

2 By court What is value of farm sold subject to dower right?

a $1500

Signed Jesse L. Cobb

W. B. Simmons being duly sworn deposes as follows

I am 32 yrs old. former. live about one mile from land in controversy and know parties to this suit

2 You have heard the evidence of Mr Jno I Lewis and Mr Jesse L Cobb do you or do you not agree with them in what they have said?

a I do

Cross exm by defts atty

2 State whether or not in your opinion the share of J. L. Nicholson in the land in controversy could be allotted to him and the residue thereof sold without injury to the rights of any party?

a I think it could not

2 How would it injure the other parties to do so.

a The other part would not sell for its value

2 What is the value of the farm subject to the dower?

a $1000 or $1200

2 What would be the value in your opinion of the shares of M. J. Nicholson & a See Rawlings if cut off

a I dont know what this propositions would be

2 Is there not a strip of pine timber almost around the entire boat?

a No sir

2 Is there not pine timber the entire length of the one side of the form?

a No sir not entire length

2 Is there any on the other side of the form?

a Not any

Signed W B Simmons

W. W. Debreed being first duly sworn deposes says as follows

I am 50 yrs. on former live in Courtland Va and know parties to this suit

Q Have you heard the evidence of Jesse L. Cobb & W.B. Simmons & if so do you concur with them or not

A I do with the exception of one thing, which is that I think the land is worth $1500 with the dower in it.

Q How far do you live from it?

A I now live 7 miles from it. but up to Seven years ago lived in 2½ miles from it

Q Have you ever been upon the land with a view of ascertaining whether it could be divided in kind or not?

A I have not

Q Do you think the land would bring its true value if sold at the present time?

A If it was advertised properly it would

Commissioners Office
Courtland Va March 1st 1897

To the Hon Robt. R. Prentis Judge of the Circuit
Court of Southampton Co Va
In obedience to a decree of the aforesaid
court entered at its Sept. Term 1896
in the chancery cause of Nicholson vs
Nicholson & the undersigned commissioner
reports to court. That notice was duly
served on the parties to this suit
requiring them to appear before him
at his office at Courtland Va on
* July 20/97 & and by request of parties. Same adjourned to
March 1st 1897. (Counsel for both
plaintiff and defendants agreeing
to said place & date, at which time
and place he should proceed to
inquire into, state & submit the
report called for by the aforesaid
decree. That at said place & time the
said parties having this attorneys duly
present looking after their interests
the following parties being present
as witnesses namely, E. F. Rose. J. W. Simmons
J.A.S. Pearce, W.H. Gray, Jno. A. Handley, Jno. I. Turner,
J. L. Cobb. W.B. Simmons and W.H. Stroud
He proceeded to take their evidence
in regard to the subject matter
and reports as follows

1st That M.J. Nicholson has her dower assigned her in 27 acres of said land having dwelling houses & out houses thereon

the whole tract containing 145¼ acres more or less, and that she is also entitled in fee to ¼ of whole tract subject to Dower right. that J. D. Nichols is entitled to 1/4 in fee of said tract subject to Dower right. and A. Lee. Rawlings 1/2 in fee of said tract subject to Dower right. The whole tract is worth some $1800. free of dower. None of the parties wish their shares allotted or laid off together, and while M. J. Nicholson & A. Lee Rawlings are willing to take the entire subject matter at the sale of $1800— or will sell their respective shares to J. D. Nicholson at the same price. but he (J. D. Nicholson) declines to see them his share at that sale or to buy from them at that sale and as it appears from the evidence of the witnesses herewith filed a majority of whom state the land cannot be conveniently divided in kind among the parties entitled thereto. Some of the land being very poor some very rich. some having timber on it, some not. some having build-
ing

Q when was the last time you saw the land in question?

A Not since I have been living in Cornland; but know it almost as well as I know my own place

Signed W. N. Debrell

Subscribed & Sworn to before me by the said C. F. Reese, J. A. S Pearce, J. R. Simmons. Jno. A Hundley. W. H. Gray, Jno I Lucas, Jesse L. Booth, N. B. Simmons and W. N. Debrell March 17th 1897

Wm Shands
Com'r in Chancery

Nicholas

Regina of Queen Anne Edwards

Duchess

1877 Miranda of the Field

Earl of Fife

out some rod. So that all things
cosidered a division cannot
conveniently be made in kind
and your commissioners reports that
the interests of all parties will
be best promoted by a sale of
the entire subject matter (- selling
some subject to the widows dower)
and division of the proceeds among
the parties entitled thereto accord-
ing to their respective rights. That a
majority of said witnesses state that
said land if properly advertised
and sold as aforesaid will bring
a very good price now. Some $1200
or $1500 and probably even more. The
evidence of the witnesses on which
this report is based are herewith
filed. all of which is

Respectfully submitted by
Wm Shands

Comr in Chancery

Comrs fee $7.50

Witness fees

E. F. Reese	$ .50	Jno. D. Turner	$ .50
J. A. S. Pearce	.50	Jesse L. Cobb	" .50
J. W. Simmons	.50	W. B. Simmons	" .50
Jno. A. Hendly	.50	W. N. Sebrell	.50
W. H. Gray	.50	Staff for sum witnesses	2.00

The answer of John N. Sebrell Jr., guardian ad litem for the infant defendants, A. Lee Rawlings and the answer of the infant defendants by their guardian ad litem to the bill of complaint filed against them and others by Mrs M.J. Nicholson ~~and others~~, in the Circuit Court of Southampton County, Virginia.

These respondents, reserving &c, all just exceptions to th the said bill of complaint, through their said guardian ad litem, answering, say: that being infants they know nothing of the truth or falsity of the statements contained in the said bill, and they therefore confide their interest to the protection of this court. And having fully answered, they pray hence to be dismissed with their costs &c.

J.N. Sebrell Jr.
Guardian ad litem.

To J.D. Nicholson & A Lee Rawlings

Take notice that I shall through my Counsel apply to the Judge Sitting Circuit Court of Southampton County, in Vacation, in his Office in Suffolk Va. on the 28th day of April 1897, for a Decree to be entered ~~herein~~ in the Chancery Cause of M.J. Nicholson-versus-J.D. Nicholson & A Lee Rawlings. Pursuant to final decree therein to be entered.

April 20. 1897

Your obedient Servant
M.J. Nicholson
by Counsel.

Ackowledge due legal Service of
this notice. April 20. 1897.

A. Lee Rawlings by J. L. McLemore
his Attv.

Nicholson M. J.

B. } Statement of Rules

Nicholson et als.

M. J. Nicholson — Plaintiff

vs. } In chancery

J. D. Nicholson & A. Lee Rollings a minor. Defendants,

1896. 11. Feby. Process Iss. to 1st. March Rules.

" 1st March Rules, Process returned executed as to adult defendant, Bill filed, J. N. Sibrell Jr. appointed Guardian ad litem to infant defendant.

1896. 2nd March Rules, Bill taken for Confessed as to J. D. Nicholson, (the adult defendant) and Cause set for hearing as to him.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON A. Lee Rawlings a minor

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 1st Monday in March next, to answer a Bill in Chancery exhibited against him & als in our said Court by Mary J. Nicholson

And this he shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, ~~T. M. HOWARD~~ L. A. Gay, Clerk of our said Court, at the Courthouse, this 11th day of February, 189~~6~~7, in the 1~~2~~1th year of the Commonwealth.

TESTE: L. A. Gay, C. C.

A copy. Teste: L. A. Gay

Nicholson Mary J.

Vs. } Summ: In Chy:

Nicholson J. D. &c.

1896. 1. March Rules.

Leave to Ent.

Entered and Issued Summons
& Copy of Bill
Summons to J. D.
Nicholson. & Leave
Rendering as Usual
Feb 15 96.

A. G. Jones Solr

for J. W. Williams
Nicholson Solr

Ent & Issd

(1)

Prince & McLennan p. q.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON J. D. Nicholson and A. Lee Rawlings a minor.

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 1st Monday in March next, to answer a Bill in Chancery exhibited against them in our said Court by Mary J. Nicholson

And this Thou shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, ~~T. M. HOWARD~~ L. A. Gay, Clerk of our said Court, at the Courthouse, this 11th day of February, 189~~6~~, in the 12~~0~~th year of the Commonwealth.

TESTE: L. A. Gay, C. C.

Nicholson
v.
Nicholson

Enter Sept 29, 1896
Robert D. Armstrong

Entered Page 105

Nicholson et als.

Vs.

Nicholson et als.

This day this cause came on again to be heard upon the papers formerly read, and upon the report of Commissioner B. F. McLemore filed 18th day of September 1896. to which report exceptions have been taken by defendants counsel. On consideration whereof the Court, without sustaining or rejecting the said report doth order that said report be recommitted back to said Commissioner, with directions to enquire and report to Court whether or not the land in the bill mentioned, can be conveniently divided in kind among the parties entitled thereto, after the widows dower has been assigned to her, and he will also report the evidence upon which he bases his opinion to Court along with his report to Court, together withany other matter not specially stated deemed pertinent by the Commissioner, or required to be stated by any interested party.

Nicholson M. J.
vs. } Decree
Nicholson & others.

Entered
Page 70-

Southampton County Circuit Court. Mch. Term 1896.

Nicholson M. J.

Vs } Decree.

Nicholson J. D. & A. Lee Rawlings, infant

This day this cause came on to be heard upon the bill taken for confessed as to J. D. Nicholson. the answer of the infant defendant by J. N. Sebrell Jr. guardian ad litem, regularly assigned at rules, with general replication thereto, 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 will inquire and report the following;

1st. What are the several interest of the parties, plaintiff and defendant in the real estate in the bill of Complaint

2nd. Whether or not the same is susceptible of partition in Kind among the parties intitled thereto.

3rd. If any two of the parties are willing to have their shares laid off together, same partition be then made in Kind.

4th. Whether or not any of the parties will accept the entire subject matter by paying to the other parties such sums of money as their interest therein may intitle them to.

5th. Whether or not the interest of those who are entitled to the subject, or its proceeds, will be promoted by sale of the entire subject, or allotment of part and sale of the residue, together with any other matter specially stated deemed pertinent by the Commissioner, or required to be stated by any party in interest. A copy,

Teste: L. A. Gayle.

Nicholson

v } Notice.

Nicholson

1896. July 4-6.

Executed this 2nd day of July 1896 by delivering a copy of this notice to J. D. Nicholson.

A. G. Nevins Dep't
for J. W. Williams
Sheriff

Commissioner's Office,

Courtland
~~Jerusalem~~, Va., June 5th 1896.

To M. J. Nicholson.
J. D. Nicholson, Exr
R. Lee Rawlings, and infant.

You are hereby notified that I have fixed upon the 6th day of July next, if fair, if not, the next fair day thereafter (Sunday excepted), to take and settle, at my office, the following accounts, to wit:

1st: What are the several interest of the parties, plaintiff and defendants in the real Estate in the bill mentioned?

2nd: Whether or not the same is susceptible of partition in kind: among the parties entitled thereto?

3d: If any two of the parties are willing to have their shares laid off together, such partition shall be then made in kind.

4th: Whether or not any of the parties will accept the entire subject matter by paying to the other parties such sums of money as their interest therein may entitle them to.

5th: Whether or not the interest of those who are entitled to the subject or its proceeds will be promoted by a sale of the entire subject matter, or by allotment of part and sale of residue.
and any other matter deemed pertinent. &c.

required to be taken by a decree of Southampton Circuit Court, rendered at the March term, 1896, in a suit in chancery depending in said Court, in which you are parties, plaintiffs and defendants; at which time and place you are required to attend.

Given under my hand, as Commissioner in Chancery of said Court, the day and year first aforesaid.

B. F. McLemore
Commissioner.

Executed July 2. 1896. by delivering a Copy of this Summons to Geo. D. Turner & W. B. Shannon; and D. L. Cobb, being absent from his usual place of abode, I delivered a copy of same to his wife, she being over 16 yrs of age, & gave information to her of its purport. W. E. Pardue Deputy

For J. W. Williams Sheff.

Nicholson
vs
Nicholson

July 6. 1896.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON John L. Cobb - Jno. I. Turner - and W. B. Simmons J. W. R. Sebrell.

B. F. McLemore, Comr

to appear before ~~the Judge~~ of our County Court of Southampton County, at the Courthouse thereof on the 6 day of July, 1896, to testify and the truth to speak on behalf of Mrs. M. J. Nicholson

in a certain matter of controversy in our said Court depending and undetermined between Mrs M. J. Nicholson, plaintiff, and J. D. Nicholson, defendant, And this they shall in no wise omit, under the penalty of the law. And have then there this writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this 30" day of June, 1896", in the 120" year of the Commonwealth.

TESTE:

B. F. McLemore, C. C.

The evidence of E. F. Reese and others introduced by J. D. Nicholson, one of the Defendants in the Cause of Nicholson v. Nicholson et al: to be read in his behalf &c. July 1896. taken by B. F. McLemore.

Present:

The Witness: E. F. Reese being duly sworn, deposes as follows:

Q: What is your age, residence and occupation & do you know the parties to this suit: and the land in this bill and proceedings mentioned

A: I am 52 years old. reside in Southampton County. am a farmer. know the parties to the suit. and the land in the bill mentioned.

Q: What are the several rights of the parties, Plaintiff and Defendant, in said land?

A: I dont know.

Q: State whether or not said land is susceptible of partition in kind, among the parties interested?

A: I think it lies as well to be divided as any land I ever saw. I understand there are 145 acres in the tract. Mrs Nicholson is entitled to 1/4 of said land in fee. and a dower interest in the whole tract. J. D. Nicholson is entitled to 1/4 interest in the whole tract - subject to the dower. and A. Lee Rawlings is entitled to 1/2 interest subject to the dower. I think the land can be divided and that the interest of no party will be violated if proceeded in one manner. it will depend upon what disposition is made of the land after partition is made. if sold one piece at a time, I think it would sell for more than if sold as a whole.

and each parcel would rent for more, if partition were made in kind. I went over the land on yesterday - to see if the land could be divided. I think ⅔ of the land is cleared. there is a narrow strip of wood land on the east side of the tract.

Q: If any two of the parties are willing to have their shares laid off together. Could partition be then made in kind?

A: I think it could be divided more easily, and better, if the parties would have their shares cut off together but dont know whether they will or not.

~~A:~~ ~~Whether~~

Q: Whether or not the interest of the parties entitled to the subject or its proceeds would be promoted by a sale of the entire subject matter. or by sale of part and allotment of residue

A: I dont think it would bring much if sold now, in a body. I dont know what to say about selling a part and allotting balance. When I said I thought the interest of the parties would be promoted by partition in kind. and that the land land would sell for more, if sold in parcels than if sold in a whole. I mean to say, that that would depend upon which parcel was sold first. but if each parcels should be sold at the same time, then I think it would sell for more after partition is made, than if sold as a whole.

Q I think the rights of some of the parties would be injured by a sale of the land as a whole.

E. F. Reber

The witness, J. A. S. Pearce. being duly sworn, deposes and says: I am 50 years old, reside in Southampton County. I know the parties to the suit and the land in the proceedings mentioned — I went over the land with Mr Reese on yesterday, have heard is evidence in full, and fully concur in all he has said.

J. A. S. Pearce

Subscribed and sworn to before me.

B. F. McLemore, Com: Ch

The Depositions of H. B. Simmons and others - taken before B. F. McLemore Commissioner in Chancery of the Circuit Court for Southampton Co. on the 6th day of June 1896. to be read as evidence in the Chancery Cause of Nicholson & Nicholson trals:-

The Witness H. B. Simmons - being duly sworn, deposes as follows:

Q: What is your age, residence and occupation, and do you know the parties to the suit and the land in the bill mentioned?

A: I am 30 years of age, reside in Southampton County. also a farmer. know the parties to the suit - and the land mentioned. I reside very near the land.

Q: Would it in your judgment, be to the interest of the parties entitled to the subject matter, to have their respective interest allotted to them in kind. or would it be to the interest of the said parties to have the entire subject matter sold. and the proceeds divided.?

A: I think the interest of the parties would be promoted by a sale of the entire subject matter - the land will sell for see, it is worth. and in my opinion, more than it is worth, if sold in a body - besides I do not see how it can be divided, in kind - I think cutting the land up into shares. would seriously injure the value of the land.

And more This deponent saith not.

H B Simmons.

Attendance 50¢.

The witness. Jno. I. Turner. being duly sworn, deposes as follows: Viz:

I am 50 years of age. reside in Southampton County. On the adjoining farm to the one in the bill and proceedings mentioned. Know the farm well. and know the parties to the suit.

Q: Do you think the land in the bill mentioned can be divided in kind among the parties entitled. or by allotment of part and sale of residue. or would it, in your judgment, be to the interest of all parties concerned to, sell the entire tract as a whole. and divide the proceeds according to the rights of the several parties?

A: The land can be cut up into lots. but I do not think it can be done with satisfaction to the parties, nor with equal justice. the best disposition that can be made of the land is to sell the entire tract, and divide proceeds. I think the land will sell for $1800.00 which is a big price.

John I. Turner

The Witness W. N. Sebrell, being duly sworn, deposes as follows & viz:—

I am 50 years of age, and have known the land in the bill and proceedings mentioned for a number of years. and fully concur in the statement above made by John I. Turner.

W. N. Sebrell

The witness Jesse L. Cobb - being duly sworn, says; I am 45 years of age, live near the land in the bill mentioned and have known it all my life: and I fully concur with John I. Turner, and W. H. Sabrell, in their evidence above.

Jesse L. Cobb

Subscribed & sworn to before
B. F. McLemore Comr
in Chancery

Nicholson

vs } Report.

Nicholson & al.

1896. 18th August Filed

L. A. Gay C.C.

27 acres

Commissioner's Office.
Courtland, Va.
July 1896.

To Hon: Robt. R. Prentis. Judge of the Circuit Court of Southampton County.

In obedience to a decree of the Court aforesaid entered at the March Term 1896. in the Chancery Cause of Nicholson &c Nicholson &c., the undersigned Commissioner reports to Court, - That on the 5th day of June 1896. he issued Notice against the parties thereto, plaintiff and Defendant. requiring them to appear before him, at his Office, in Courtland, on the 6th day of July 1896. at which time and place he should proceed to enquire into, State and Submit the report called for by the aforesaid decree. that said Notice was duly served upon J.D. Nicholson, by the Sheriff of this County. and legal service thereof acknowledged by the other parties by their Counsel. The Commissioner, at the same time and place, issued Subs against W.B. Simmons, Jno. T. Turner, Jesse L. Cobb and W.N. Sebrell. to appear before him as Witnesses. said parties being disinterested. and familiar with the land in the bills and proceedings - its location, boundaries, quantity, quality and value thereof. and upon the evidence of the Witnesses aforesaid. or such of them as appeared before him. the Commissioner takes the following report.: Viz:

1st: The tract of land in the bills and proceedings mentioned, Contains 145¼ acres, more or less. and valued at $1800.00. the interest of the parties, plaintiff & Defendant. in the said Land is. Mary J. Nicholson

1/3 Dower - and 1/4 in fee. J.D. Nicholson 1/4 in fee subject to Dower right. and A. Lee Rawlings 1/2 in fee, subject to the dower right of his mother.
The Commissioner is required to state whether or not the land in the bill mentioned is susceptible of partition in kind among the parties entitled - begs leave to say: that six witnesses have been examined upon this point. (all of whom are men of good standing and sound judgment.) four of them say the land cannot ~~be~~ be divided in kind. and the other two think it can be. the Commissioner therefore submits this question to the Court. together with the evidence touching the same.
No two of the parties interested are willing to have their shares laid off together. The Plaintiff Mary J. Nicholson, and Defendant A.L. Rawlings, are willing to take the entire subject matter at the sale of $1800.00. or will sell their respective shares to Defendant J.D. Nicholson at the same price & divide. he (Nicholson) declines to sell to his wife and declines his shares at any price. and also declines to buy. he further stated, that he objected to a sale or partition - but if forced to submit to either. he preferred having his share ~~set~~ laid off and allotted to him.
The depositions of the witnesses and the Notice of the time and place of taking this account. are filed herewith, to which the attention of the Court is specially directed.

Respectfully Submitted.
B. F. McLemore, Com'r in Ch.

Com'r's fee $

M.J.Nicholson,

vs. Decree.

J.D.Nicholson et als.

1897,April 28th. Enter.

Robert D. Lewis

Entered Page 147

Virginia,

In Vacation, in the Circuit Court of Southampton County.

April 28th. 1897.

Mary J. Nicholson,

Versus.

J.D.Nicholson and A.Lee Rawlings.

This day this cause came on again to be heard upon the papers formerly read, upon the report of J.L. McLemore and J.N.Sebrell,Jr., Special Commissioners, reporting sale of the tract of land in the bill mentioned to A.Lee Rawlings for the sum of $1670.50, which report is filed this day, and to which no exceptions have been taken, upon notice to the purchaser and the defendants, of plaintiff's intention to apply for this decree in vacation, and was argued by Counsel. On consideration whereof the Court doth confirm the said report, and doth adjudge, order and decree that the sale to the said A.Lee Rawlings be made firm and binding, and doth further order that said Commissioners execute to the purchaser, upon receipt of the purchase money, a deed with special warranty for the tract of land in the bill mentioned, subject to the dower interest therein of Mary J. Nicholson, and out of the funds in their hands, after paying the legal cost attending the sale and this suit, pay over the to the parties as follows: One half to A.Lee Rawlings, one fourth to M.J.Nicholson and one fourth to J.D.Nicholson or his attorney, and said Commissioners shall report to Court.

To the Clerk of the Circuit
Court of Southampton County.

Robert D. Phillips

Nicholson M.J.

v. Decree

Nicholson & other.

1896. March 24

To be entered.

Robert D. Mills

Entered

Page 70—

J. B. Lippincott Company,
Booksellers and Stationers,
Philadelphia, Pa.

Nicholson M. J.

vs. Decree.

Nicholson J. D. + A Lee Rawlings, infant.

This day this cause came on to be heard upon the bill taken for confessed as to J. D. Nicholson, the answer of the infant defendant by J. N. Sewell Jr. guardian ad litem, regularly assigned at rules, with general replication thereto, 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 will enquire, and report the following:

1st What are the several interests of the parties, plaintiff and defendants in the real estate in the bill of Complaint

2nd. Whether or not the same is susceptible of partition in kind among the parties entitled thereto.

3rd. If any two of the parties are willing to have their shares laid off together, could partition be then made in kind.

4th Whether or not any of the parties will accept the entire subject matter by paying to the other parties such sums of money as their interest therein may entitle them to.

5th. Whether or not the interests of the parties who are entitled to the subject or its proceeds will be promoted by sale of the entire subject, or allotment of part and sale of the residue; together with any other matter specially stated deemed pertinent by the Commissioner, or required to be stated by any party in interest.

Nicholson M. F.

vs. } Statement of Costs

Nicholson A. D. et als,

Nicholson M. J.

vs. } Statement of Costs

Nicholson J. D. et al

Summons 25¢, 2 Copies 25¢, receipt 18¢, Ally. 10¢, Docket 18¢ = 97

Rules 1.00, Entering Return 35¢, fil. bill 15¢, D. E. 15¢ = 1.65

Filing 2 answers 30¢, replication 15¢, fil. two Comrs report 30¢ = .75

fil. two sets depositions 30¢, fil. D.D.N. Exceptions 15¢ report 15¢ = .45

3 Decrees 1 Copy $2.10, Tax costs and Copy 40¢ = 2.56

Entering 2 Comrs bonds etc. $2.00 fil. away papers 25¢ = 3.05

Future costs about $2.50 .51

Paid L. A. Gray Clerk $ 9.94

Sheriff 6.50

Paid — Costs 16.50

$ 34.90

Paid B. F. McLemore

Costs B. F. McLemore Jr 5.00

May 17/97 Paid Wm Shands Sheriff 7.50

Witness fees J. F. Rowe .50 J. J. Timmons .50

J. A. S. Pearce .50 J. L. Cobb .50

paid. J W. Simmons J. W. Simmons .50 W. D. Simmons .50

J. Abernethy .50 W. N. Schroer .50

W. H. Gray .50 = 2.50 2.00 = 4.50

$ 51.93

9.94
7.26
8.26
25.96

Rec'd May 17. 1897 of J. L. McLemore
Com'r Nicholson 3rd. Nicholson, the
Sum of Three Dollars for Copying roll
Estate of April Court 1897.

J. W. Pittman

$390.04

Recd. dMay 3rd. 1897. of J. L. W. Lmore and J. N. Sibbald Jr. Spec Comr. the sum of Three Hundred & Ninety & 04/100 Dollars, same being my One fourth interest in the net proceeds arising from the sale of J. H. Rawlings farm sold by said Special Commissioners, April 19. 1897.

M. L. Nicholson

$780.08

Recd. dMay 3rd 1897 of J. L. W. Lemore & J. N. Sebrell Jr., the sum of Seven Hundred & Eighty $^{08}/_{100}$ Dollars, Same being my one half interest in the net Proceeds arising from the sale of the J. H. Rawlings farm. sold by Special Commissioners, April 19. 1897.

A. Lee Rawlings

$390.04

Recd May 3rd 1897 of Jas. L. McLendon, sheriff Ors. in suit of Nicholson vs. Nicholson et als. the sum of Three Hundred and Ninety & 04/100 Dollars, it being the amount directed by decree entered on the 28th day of April 1897, in the said cause, to be paid to J.D. Nicholson or his attorney, the same being the share of said Nicholson in the proceeds of the sale of the land after payment of costs &c.

Jno. C. Shiell Jr.
Atty of J.D. Nicholson.

Nicholson - M.S.
v. 3 Final Report of Commissioners
Nicholson et al.

1897 Sept. 29. filed.

M. J. Nicholson
vs. Report of Special Comrs.
J. D. Nicholson et als.

The undersigned Special Comrs. beg to report that pursuant to said decree of April 28th 1897 they received the entire purchase price of $1670.50 from A. Lee Rawlings and executed to him a deed with special warranty for the land mentioned in the report of April 28th 1897; that the funds coming into their hands they disposed of as follows:

From Sale of the farm		$1670.50
Comrs on same.	$42.10	
Crier	3.00	
Posters	1.00	
Costs of the suit	51.93	
Deed to Purchaser	10.00	
Future costs	2.00	110.33
		$1560.17

Distributed as follows:

To A. Lee Rawlings	1/2	$780.08
" M. J. Nicholson	1/4	390.04
" J. D. Nicholson	1/4	390.04 $1560.16

Vouchers filed.
Sept. 29th. 1897

Respectfully Submitted.
J. L. McLemore.

Nicholson M.
vs Decree
Nicholson J. Dedi.

1897. Sept. 29th.
Entd.
Robt. R. Dantis

Entd Page 174

M. J. Nicholson

vs.

J. D. Nicholson & others

This day this cause came on to be again heard upon the papers formerly read, and upon the final report of Special Commissioners J. M. Sibert Jr. & J. L. McLemore reporting collection & disbursement of funds arising from the sale of the land in the bill & proceedings mentioned, supported by proper vouchers; which report is filed this day (September 29th 1897) and to which no exceptions have been taken, and was argued by Counsel. On consideration whereof, the Court doth adjudge & ordain & decree that said report be and the same is hereby Confirmed; and the deed executed by the said A. Lee Rawlings by the Commissioners made & given and binding and nothing further remaining to be done in this cause, the same is removed from the docket.