

1902-21

Southampton County Chancery - Whitehorne, Archie B.C. vs Donaldson, Clara P. et al.

to have a valid deed for a tract
of land; to see if the defendant
can make the deed according to
a clause in former will.

Donaldson, C. N. (husband)

" , C. N., Jr.

" , William T.

Newsom, T. D.

" , Clara C.

" , Thomas, M.

" , Sarah C.

" , H. Estelle

" , Helen M.

in
ex
st

Story, E. F. Gdn. ad
litum

Whithorn A. B. L.

vs. } Bill Exhibits

Donaldson et al

1901. 6" Dec. Filed

Gish v. Morris
89 Va 345

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT
OF SOUTHAMPTON COUNTY.

Humbly complaining sheweth unto the court Archie B. C.
Whitehorn, of the county of Southampton, Virginia, that some-
time in the year 1900, to wit, on or about the 20th. day of
November, 1900, he entered into an agreement with Cora P. Don-
aldson and C. N. Donaldson, her husband, of the State of Geor-
gia, the said Cora P. Donaldson acting through the said C. N.
Donaldson, her attorney in fact, whereby they agreed to sell
to him that certain tract of land lying in the said county of
Southampton, containing two hundred and seventy-five (275)
acres, more or less, and known as the homestead of the Rev.
Thomas M. Newsom, deceased, bounded as follows: On the North
by the public road, on the East by the lands of Joseph H.
Gilliam, on the South by the lands of Clara C. Newsom and on
the West by the lands of Cora P. Donaldson; the purchase price
agreed upon for the said land being Fourteen Hundred and Eighty
five (\$1485) Dollars, and the said Cora P. Donaldson and C. N.
Donaldson, her husband, therein and thereby agreed and bound
themselves to grant to your complainant a full and clear title
deed for said tract of land upon the payment of the purchase

money, all of which will appear more fully by reference to a paper setting forth said facts filed herewith as a part of this bill and marked Exhibit "C.P.D."; that at the time of said purchase your complainant was told by the said C. N. Donaldson that the title to the said property was clear and that there was nothing in the way of the said grantors making to him a good and valid deed; that in accordance with said statement and with the agreement then and there entered into, your orator sold the farm upon which he was then living at a price materially less than he would have parted with it, for, had he not expected to immediately invest his money in the property above described and moved upon the said farm of two hundred and seventy-five acres, and made improvements and repairs upon same and made every arrangement to meet the payments as set forth in the aforesaid paper marked Exhibit C.P.D.; but hearing it rumored that there was some defect in the title to the property, your orator had same investigated, and found that in his judgment the title was clearly defective so that your orator did not then, nor does he now, know whether or not the said Cora P. Donaldson and C. N. Donaldson, her husband, can make to your complainant a good and valid deed for the property

but on the contrary is advised that the same is very doubtful.

Your orator would state that upon receiving this information he communicated with the said Core F. Donaldson and C. E. Donaldson, her husband, hereafter called the defendants, with

a view to having this court construe the will of the said

Thomas M. Newson, deceased, through whom the said defendant

received the land in question, that the title to same might

be made clear and your orator's mind set at rest before he was

called upon to invest his hard earnings and savings of his

life, in a home which otherwise in his declining years might

be swept from him and his family, but was unable to get the

said defendants to any agreement respecting same. Your orator

offered on one occasion to pay the cost of these proceedings

in order that there might be a construction of the said

will and that there might be no possible grounds for complaint

from said defendants, but this as well as all other proposi-

tions which your orator has made has failed to meet the ap-

proval of said defendants, who, it would seem, are anxious to

have the agreement declared forfeited because your orator had

not paid the money as therein set forth.

Your orator respectfully states that he has all the while

had the money with which to pay for this land: that same has

been for a long time, and still is, lying in bank, kept there
uninvested for the sole purpose of meeting the payment for
this property when the title is ascertained to be of the kind
agreed to be sold.

Your orator agreed to buy the property and move upon it,
is now living upon it, and is willing, ready and anxious to
pay for same, but he is advised that it is equally the duty
of the defendants to give him that which they agreed, to wit,
a good and clear title; and that it is also their duty, and
good faith to him demands, that they not only should not throw
any obstacle in the way of his getting such title if same can
be gotten, but that they should lend their earnest, hearty
and active support and assistance to him in the effort to ascer-
tain by the proper authority whether or not it is possible for
the agreement to be carried out.

Your orator begs to state that the title in the said de-
fendant, Cora P. Donaldson to the property in question is de-
rived through and by the last will and testament of Thomas M.
Newsom, deceased, the first clause of which, as it relates
to the land in question, is as follows:

"I lend to my beloved wife, Priscilla P. Newsom, the fol-
lowing tracts or parcels of land: 1st. my homestead tract con-
taining 621 acres, 2nd. the tract known as "Mason's" contain-
ing 203 acres, 3rd. the tract known as "Scarborough's" contain-

ing about 125 acres, together with my half of the Grist Mill property. The above named property to have and to hold during her natural life and at her death to be equally divided between my two children, C. P. Donaldson and Thomas D. Newsom, or their children, but if either should die without living issue, the children of the other shall inherit that one's portion."

Now the said Cora P. Donaldson has living, and had living at the death of Mrs. Priscilla P. Newsom two children, C. H. Donaldson Jr., and William T. Donaldson, both of whom are over twenty-one years of age and reside in the State of Georgia; that Thomas D. Newsom and Clara C. Newsom, his wife, has living four children, all of tender years, to-wit, Thomas Moore, Sarah C., H. Estelle and Helen M. Newsom.

These being the facts your orator is ^{un-}advised as to the effect of the above mentioned clause of the will of Thomas H. Newsom, deceased, but believes that a true construction of the said will would be to declare that upon the death of Priscilla P. Newsom the said Cora P. Donaldson having children then living perfected the fee in the said Cora P. Donaldson the will speaking as of the time of the death of the said Priscilla P. Newsom and not as of the time of the death of the said Cora P. Donaldson or Thomas D. Newsom.

But your orator is advised that this is a question involving one of the most obtruse and difficult problems that the courts have to deal with, and having grave doubts as to what

would be decided by a court of competent jurisdiction, he respectfully asks for a decision upon this question that he may know whether he is being offered a good title or not.

Your complainant also alleges and charges that having and C. E. Donaldson, her husband, may be required to have been at all times ready to make the payment required by the contract herein described and having urged and besought the said defendants to have the title adjudicated, and having all his reasonable requests declined by said defendants, he is advised and alleges that the cost of these proceedings, in equity and right should be borne by these defendants.

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, to the end, therefore, that justice may be done, he prays that Cora P. Donaldson and C. E. Donaldson, her husband, C. N. Donaldson Jr., William T. Donaldson, T. D. Newsom and Clara C. Newsom, his wife, Thomas Moore Newsom, Sarah C. Newsom, H. Estelle Newsom and Helen M. Newsom, the last four infants, be made parties defendants to this bill and required to answer the same, but answers under oath are hereby expressly waived that the will of Thomas M. Newsom, deceased, may be construed by this court and the validity

7.

of the title to the property devised to Cora P. Donaldson in the first clause thereof passed upon and ascertained by this court; that the said defendants, Cora P. Donaldson and C. H. Donaldson, her husband, may be required and compelled to execute to your orator, if the title is such that it can be done, a good and clear title to the property mentioned and described in the contract of sale filed as exhibit herewith upon receipt of the purchase money, and to this end that a commissioner may be appointed by this court to execute to your orator a deed for same; that if the said court should be of the opinion that the said Cora P. Donaldson and C. H. Donaldson, her husband, cannot give a full and clear title to the property as they have agreed to do, then that your orator may be allowed such damages as may have been incurred by him by reason of the contract of sale and the failure of said defendants to give to him what they agreed to do; that all such other, further, general and special relief may be granted to your orator as the nature of his case may require or to equity shall seem meet. And your complainant will ever pray, etc.

Wm. C. [illegible]
D.C.

Archie B. C. Whitson

Whitcomb F. B. L.

vs. } Spa. In Chanery

Donaldson et al.

1901. 1st. December Rules

box 68.

Executed Nov. 30th 1901

By delivering a copy of
this 'Spa in Chan' to J. W.
Newson and a copy to
Clara C. Newson

T. C. Triggonds

deft. for J. Williams
S. J.

(2)

M. L. Moore & Co. att.

P. J.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County--Greeting:

WE COMMAND YOU THAT YOU SUMMON Lora P. Donaldson and her husband,
her husband G. A. Donaldson Jr. William J. Donaldson, J. A.
Newson, Lora L. Newson, Thomas M. Newson, Sarah L. Newson,
H. Estelle Newson and Helen M. Newson the last four
infants

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 Dec. 1901 next, to answer
a Bill in Chancery exhibited against them in our said Court by
Archib. B. L. Whitaker

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

WITNESS, L. A. GAY, Clerk of our said Court, at the Courthouse, this 19th day of
Nov 1901, 1899, in the 12th year of the Commonwealth.

Teste: L. A. Gay C. C.

Whitehorn

vs. } Stat: of costs

Donaldson et als.

Whitcomb A.B. 6.

vs. { Stat: of Costs

Donaldson et als.

Sum. 25. 2 Cap. 26, receipt 18, atty. 10. docket 18 = .97

Rules 150, Entering return 35, fil. bills 15 = 2.00

Do. Ex. 15. Affidavit as to non-residence 15 = 30

fil. same 15. Copy order prob. for printer 20 = 35

Do. To post 20, fil. order prob. 20. Do. ^{certificate} printer 15 = 55

1 Decree 36. Tax costs 22. 40. fil. away papers 25 = 101

Future costs if nothing to be done except decree

To dismiss at next Term of Court. } 36

10/6/1902 P.D. by J.D. McLeone L. A. Gay clerk \$5.54

pd J.H. ^W _W Staff. 1.00

Paid payment. McLeone & Corbitt _{attys.} Lawr. 16.50

\$23.04

Acct. of Franklin Job Printing Co. P.D. L.A. Gay 8.00

\$31.04

Total: L. A. Gay 6.4.

5/28/1902

10.00
5.54
5.00
10.54

Whitcomb

vs { Stat: of Rules

Donaldson et al.

Archie B. L. Whitcomb Plaintiff

vs.

Eura P. Donaldson, and L. N. Donaldson,
her husband, L. N. Donaldson jr.

William T. Donaldson, T. S. Newsom.

Etara L. Newsom, Thomas M. Newsom,

Sarah L. Newsom, H. Estelle Newsom

and Helen M. Newsom the last four

infants

Defendants

1901. 19th November, Process issued 1st Dec. Rules

1901 20th November, Affidavit as to non-residence

Filed. Order of publication
issued.

1901 1st Dec. Rules, Process returned executed

Bills and exhibits not filed.

E. F. Story appointed 4th.

addition to infant defendants

1901. 2nd Dec. Rules. Bills and exhibits filed.

Answer nisi

1902 1st Jan. Rules. Order publication completed.

Bills taken for confessed

and cause set for hearing

for chambers



Franklin, Va., Oct 11, 1902
Messrs. M Lemore & Corbett, p.s.
To THE GRAPHIC, Dr.

{ A Weekly Newspaper Devoted to the Interest of Southampton and Adjoining Coun- }
{ ties. Ten Pages and ALL HOME PRINT. Subscription, \$1.00 a Year in Advance. }

BOOKLETS,
1901. PAMPHLETS AND ALL JOB PRINTING Neatly and Promptly Executed.

Nov 22 To Court Publication & t.
Whithorne vs Donaldson and
others

8 00

PAID, by L. A. Gay
THE GRAPHIC.
Per. W. M. Maggs

1

Franklin, Va., Jan. 6, 1902

Mr L. A. Gay, C. C.

TO FRANKLIN JOB PRINTING CO., Dr.

W. A. MAGEE, Manager.

—BOOKLETS, PAMPHLETS AND ALL—

© Job Printing Neatly and Promptly Executed. ©

20 Court Publication 4 issues
7 1/2 inches

8 00

Archie B. C. Whitehome vs. Cora P. Donaldson and
C. N. Donaldson, her husband, and others.

I hereby certify that the order of pub-
lication, a copy of which is hereto attached,
was published for four successive weeks
beginning Nov. 22, 1901 and ending Dec 13,
1901, in The Graphic, a newspaper published
in Franklin, Va.

W. A. Magee, Ed.

VIRGINIA:

In the Clerk's Office of the Cir-
cuit Court of Southampton
County, the 20th day of November, 1901
Archie B. C. Whitehome, . . . Plaintiff.

vs.
Cora P. Donaldson and C. N. Donaldson,
her husband, C. N. Donaldson, Jr., Wil-
liam T. Donaldson, T. D. Newsom,
Clara C. Newsom, Thomas M. New-
som, Sarah C. Newsom, H. Estelle
Newsom and Helen M. Newsom, the
last four infants, . . . Defendants.

The object of this suit is to require the
defendants, Cora P. Donaldson and C.
N. Donaldson, her husband, to execute
to the plaintiff a good and valid deed for
a certain tract of land lying in the Coun-
ty of Southampton containing two hun-
dred and seventy five (275) acres, more
or less, known as the homestead of Rev.
Thomas M. Newsom, deceased, and to
that end to have the Court say by its de-
cree whether or not the said Cora P.
Donaldson and C. N. Donaldson, her
husband, can make a good and valid
deed to the property above mentioned
in view of the first clause of the Will of
the said Rev. Thomas M. Newsom, de-
ceased.

And affidavit having been made and
filed that Cora P. Donaldson and C. N.
Donaldson, her husband, C. N. Donald-
son Jr., and William T. Donaldson, are
non-residents of the State of Virginia,
the said Cora P. Donaldson and C. N.
Donaldson, her husband, C. N. Donald-
son Jr., and William T. Donaldson, are
required to appear within fifteen days
after the publication of this order, in
the Clerk's office of our said Court at
rules to be holden therefore and do what
is necessary to protect their interest,
and it is ordered that a copy of this or-
der be forthwith published once a week
for four successive weeks, in THE GRA-
PHIC, a newspaper printed and publish-
ed in the town of Franklin, Southamp-
ton County, Virginia, and posted as the
law directs.

A Copy—Teste:

L. A. GAY, C. C.

November 20th, 1901.

McLEMORE & CORBITT, p. q.

Virginia: In Vacation, In the Clerk's Office of the Circuit Court of Southampton County, The 20th. day of November 1901.

Archie B. L. Whitthorn

Plaintiff

vs.

Lora P. Donaldson and L. N. Donaldson her husband, L. N. Donaldson Jr., William J. Donaldson, J. D. Newsom, Lora L. Newsom, Thomas M. Newsom, Sarah L. Newsom, H. Estelle Newsom and Helen M. Newsom, the last four infants, Defendants

The object of this suit is to require the defendants, Lora P. Donaldson and L. N. Donaldson, her husband, to execute to the plaintiff a good and valid deed for a certain tract of land lying in the County of Southampton containing two hundred and seventy-five (275) acres, more or less, known as the homestead of Rev. Thomas M. Newsom, deceased, and to that end to have the Court say by its decree whether or not the said Lora P. Donaldson and L. N. Donaldson, her husband, can make a good and valid deed to the property above mentioned in view of the first clause of the will of the said Rev. Thomas M. Newsom, deceased.

And affidavit having been made and filed that Lora P. Donaldson and L. N. Donaldson, her husband, L. N. Donaldson Jr. and William J. Donaldson, are non-residents of the State of Virginia the said Lora P. Donaldson and

L. S. Donaldson, her husband, L. S. Donaldson Jr.
and William J. Donaldson are required to
appear within fifteen days after due publication
of this order, in the clerk's office of our
said court, at rules to be holden therefor
and do what is necessary to protect their
interests and it is ordered that a copy of
this order be forthwith published, once
a week for four successive weeks, in the
Graphic, a news paper printed and published in the
Town of Franklin, Southampton County, Virginia, and
posted as the law directs.

Test: L. R. Hay C. C.

November 20th 1901

McLemore & Corbitt

S. G.

Virginia, In the clerk's office of the Circuit
Court of Southampton County, to wit:

J. L. R. Hay clerk of said Court do certify
that a copy of the foregoing order of publication
was posted at the front door of the Court House
of the County of Southampton, at the December
Term of the County Court thereof.

Given under my hand this 7th day of Jan'y. 1902

L. R. Hay C. C.

Whitehorn

vs. } Order publication

Donaldson et al.

1901, 20th Nov. First

L. A. Gray Esq.

STREET LIGHTS

ROBERT L. BROWN

Amper 120j.

Unpublished and known to persons in the Dept. of Ho-

Given under my hand this 12th day of November, 1867.
Governor of Virginia.

Edward W. and William T. Donahoe, are non-residents of the
 County. Donahoe and C. K. Donahoe, not present; C. H. Don-
 ahoe, James W. McNamee, do hereby make oath and say that

W. Hildorn

vs. } Affidavits as to non-
residence.

Donaldson et al.

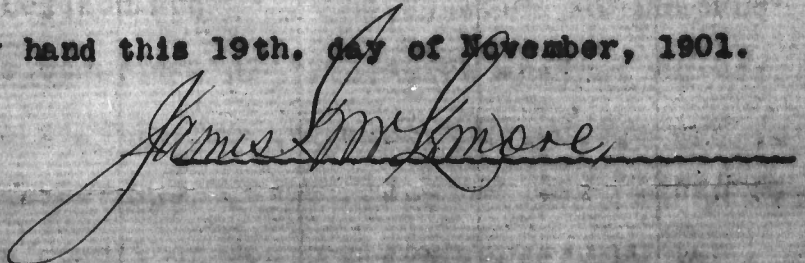
1907. "K. H. Davidson, deceased, and to the heirs of the first clause of the will of the said Rev. Thomas Davidson, deceased, and to the said Cora F. Davidson and C. H. Davidson, her husband, that and to have the court say by its decree whether or not the homestead of the Rev. Thomas H. Davidson, deceased, and to

of land lying in the county of Southampton containing two
so the plaintiff a good and valid deed for a certain tract
containing 100 acres and 10 rods of land lying in the county
of Southampton and C. W. Davidson, her husband, to execute
The object of this suit is to reduce the defendants.

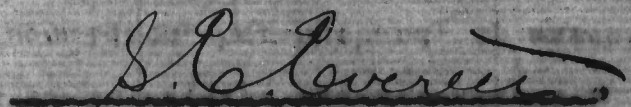
The object of this suit is to require the defendants , Cora P. Donaldson and C. N. Donaldson, her husband, to execute to the plaintiff a good and valid deed for a certain tract of land lying in the county of Southampton containing two hundred and seventy-five (275) acres, more or less, known as the homestead of the Rev. Thomas M. Newsom, deceased, and to that end to have the court say by its decree whether or not the said Cora P. Donaldson and C. N. Donaldson, her husband, can make a good and valid deed to the property above mentioned in view of the first clause of the will of the said Rev. Thomas M. Newsom, deceased.

I, James L. McLemore, do hereby make oath and say that Cora P. Donaldson and C. N. Donaldson, her husband, C. N. Donaldson Jr. and William T. Donaldson, are non-residents of the State of Virginia.

Given under my hand this 19th. day of November, 1901.



Subscribed and sworn to before me this 19th. day of November, 1901.



Notary Public.

Whitehorn A. B. C.

rs.

Donaldson, Cora P; C. A. Donaldson, C. A. Donaldson Jr., William D. Donaldson, J. D. Newsom, Clara C. Newsom, Thomas Moore Newsom, Sarah C. Newsom A. Estelle Newsom and Helen M. Newsom, the last four infants by J. F. Story, god ad litem.

By consent of parties in term entered of record it is ordered that this cause be submitted to the judge of this court for such decision and decree in vacation as might be made therein in term.

VIRGINIA, IN VACATION, IN THE CIRCUIT COURT OF SOUTHAMPTON
COUNTY, AUGUST 26th, 1902.

Whitehorn et als.

v.

Donaldson et als.

*Enter names of
all the parties*

This day this cause, in which the plaintiff has proceeded against the non resident defendants C. P. Donaldson, C. N. Donaldson, C. N. Donaldson, Jr. and W. P. Donaldson, in the manner prescribed by the Statute against absent defendants, and the adult defendants Thos. M. Newsom and Clara P. Newsom, upon whom process has been duly executed, still failing to appear and plead, answer and demur, and which has by a prior decree herein been submitted to the Judge of this Court for such decision and decree herein, in vacation, as might be made in term, came on to be heard upon the bill and exhibit, herewith filed, bill taken for Confessed as to the adult defendants Thos. M. Newsom and Clara P. Newsom; the answer of E. Frank Story, guardian ad litem for the infant defendants, Thos. M. Newsom, Sarah C. Newsom, H. Estelle Newsom and Helen M. Newsom, duly assigned at rules, with general replication thereto, and was argued by Counsel.

On consideration whereof, the court is of the opinion, and doth decide that C. P. Donaldson and Thos. D. Newsom took contingent estates in the land described in the first clause of the will of Thos. M. Newsom, deceased, said estates becoming fee simple absolute upon the death of Priscilla P. Newsom, it appearing from the papers in the cause that said C. P. Donaldson and Thos. D. Newsom each had children living

at the death of the said Priscilla P. Newsom.

Squilla P. Newson.

STANDARD INFORMATION

7

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1001 TORONTO ST. 472

100

Whitehorn et als.

v.

DECREE.

Donaldson et als.

Enter 26th day of Aug, 1902

Robert R. Huntis

En sub page 446

CONF. OF CONFIRMATION COMMISSION.
TO THE CLERK OF THE CIRCUIT
AT THE DEATH OF THE SAID PRISONER P. HENSON.

RECEIVED
JUL 11 1902

Whitehorn et al.
v 3 Deere

Donaldson et al.

Entered this
Octo 19th 1902

W. H. Deere

Entered,

Page No. 457.

Whitehorn et al.

v.

Donaldson et al.

This day this cause came on again to be heard upon the papers formerly read, and all matters in controversy herein having been heard and determined, it is ordered that same be removed from the docket -