

P.O.# = 18

29

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Sally A. Garrett vs Fraher & Garrett.

Montgomery chancery court

Appeal by defendants, Nov. Term 1875.

Filed November 8. 1877

1, 7th / 83

10th Eq. Div.

Appeal Dismissed

Sally A. Garrett vs Trahern & Garrett.

In chancery at Clarksville:

Transcript.

Injunction Bill.

Filed 3⁴⁵ P.M. Feby 21. 1874.

To Hon. C. G. Smith Chancellor &c holding the chancery court at Clarksville Tennessee.

Sally A. Garrett a citizen of Montgomery county Tennessee complainant

Against

J. J. Garrett & J. B. Trahern partners trading under the firm name of Trahern & Garrett, ^{Louisa beardy} Bob Johnson & wife Polly Johnson, Garrett Dunlop, Austin Oldham, Green Garrett, all citizens of Montgomery county Tennessee.

Complainant respectfully represents that she is the widow of Austin Garrett dec'd who died in said county & state aforesaid on the - day of September 1873, leaving Louisa beardy, Bob Johnson & wife Polly Johnson, Garrett Dunlop, Austin Oldham & Green Garrett, all colored & that said Austin Garrett dec'd was seized & possessed of two small tracts ^{or parcels} of land lying & being in Montgomery county Tenn, ^{one} containing about 6 1/5 acres & the other

about 19 acres. for a particular description of which reference is here made to deed book no 13, page 415, which may be found in the Register's office of Montgomery county Tenn. & which book will be produced & read on the final hearing of this cause if required. On the largest tract or parcel of said land the said Austin Garrett deed, executed to said Trahern & Garrett a mortgage on the 18 day of April 1872, as will appear more fully by reference to Trust deed book no. 1. page 230 in the register's office of Montgomery county Tenn, which book will be produced & read on the final hearing of this cause if required.

Complet further states she had nothing to do with the execution of said mortgage & that both said tracts or parcels of land are not worth the sum of 1,000⁰⁰. The smallest of said tracts has a house on it but is entirely devoid of wood for fuel or other purposes & therefore dependant on the other tract to keep it up, in fact the larger tract was purchased at the same time & of the same party & both are conveyed by the same deed & the second or largest tract is separated far from the first & both should be owned by the same party for the enjoyment of either.

Complainant further represents that the s'd Trahern & Garrett have sold said largest tract of land under said mortgage, as they were empowered to do by the

terms of said mortgage & they became the purchasers of said land at a price greatly inferior to that it ought to have brought, which Complt is informed is a fraud in law. because said parties cannot be the sellers & the buyers both at the same time & in the same transaction, but said Trahern & Garrett are asserting their right to said land under said sale & are seeking to dispossess Complt of said land & are proposing to sell the same to other persons.

Complt is informed said Trahern & Garrett bid off said land at the sum of \$9000 & are now asking 180\$ for it, all of which said Trahern & Garrett had no right to do, as Complt as the widow of said Austin Garrett dec'd was living on said lands, that is on the smaller tract & also using said larger tract, cultivating the same & procuring her wood off of the same, as she has no other means of support: & as she is informed she has a perfect right to do under the homestead & dower laws of Tennessee, but Complt will dispossess her of said larger tract if not restrained from so doing by this Honorable court.

Premises considered Complt prays that copy & specific for all the defendants to this bill & that they be required to answer this bill but not on oath as it is hereby expressly waived & that the States most gracious

writ of injunction ifue, restraining said Frahern &
 Garrett from further molesting or interfering with comple
 enjoyment or use of said larger tract of land & that the
 sale under which said Frahern & Garrett are claiming
 be set aside & for nothing held & that commissioners be
 appointed by this Hon Court to set apart & allot to
 comple dower & homestead in said lands, & for all other
 further & general relief as the nature of the case may
 require. This is the first application for writs of injunc-
 tion in this cause

W. A. Jackson Sol

State of Tennessee - Montgomery county.

Sally A. Garrett, complt in the foregoing bill makes oath
 that the statements therein as of her own knowledge are
 true & those made on information she believes to be true,
 & that owing to her poverty she is unable to bear the ex-
 penses of the suit which she is about to commence
 in the chancery court at Clarksville Tenn, against
 Frahern & Garrett et al & that she is justly entitled
 to the relief sought by said suit, to the best of her
 knowledge & belief

Sally A. Garrett (her x mark)

Sworn to & subscribed before me Feby 21. 1874.

Peck G. Johnson C. C. W.

To Peck G. Johnson, Clerk & Master of the

chancery court at Clarksville, Tennessee.

I give an injunction & all proper process in accordance with the prayer of the foregoing bill. Complt having taken the oath prescribed for the benefit of poor persons you will not require bond either for costs or for the suing out of the injunction. Feby 21. 1874.

Chas. G. Smith, Chancellor

Injunction

Issued 3rd p.m. Feby 21. 1874

State of Tennessee to J. J. Garratt & B. Graham, (Graham & Garratt): Whereas it has been represented to us in our court of chancery at Clarksville, in a certain suit in chancery between Sally A. Garrett complainant, and you & others defendants, on the part of said complainant, that on the 8th April 1872 one Austin Garratt, now deceased, executed to you a mortgage on two tracts of land, one of which, containing about 19 acres, you have sold by virtue of said mortgage, & that you became the purchasers at said sale & are now seeking to dispossess said Sally A. Garrett, & Hon C. G. Smith Chancellor having ordered that you be enjoined from molesting said Sally A. Garrett in the peaceable & quiet possession of said tract of land,

We therefore in consideration of the premises aforesaid do strictly enjoin & command you the said J. J. Garrett & J. B. Trahern, all & every the persons before mentioned, under the penalty prescribed by law of your & every of your goods, lands & tenements to be levied to our use, that you & every of you do absolutely desist from in any way molesting said Sally A. Garrett in the quiet & peaceable possession of said land until the hearing of this cause in our said court of chancery. Witness P. G. Johnson, clerk & master of our said court at office in the town of Clarksville on the 1st Monday in November 1873.

P. G. Johnson cwm

By A. C. Smith D.C. & cwm.

Came to hand when issued, Executed by reading the within injunction to J. B. Trahern & J. J. Garrett, this
 Feby 25. 1874

Jno. R. Martin D.S.

Subpoena to answer

Issued mch 3. 1874.

State of Tennessee to the Sheriff of Montgomery county.

Summon J. J. Garrett, J. B. Trahern, Louisa Cleary, Rob Johnson wife Sally Johnson, Garrett suncof, Austin Oldham, Green Garrett personally to appear before the

chancellor at the chancery court to be holden in
clarksville in the 6th Division on the 1st Monday in
April next, then & there to answer the bill of complaint
of Sally A. Garrett exhibited & now pending in said
court against them & this you shall in no wise omit
under the penalty of the law. therein fail not. Witness:
Peck G. Johnson clerk & master of our said court. at
office in the city of clarksville the 1st Monday of
Novr 1873.

P. G. Johnson c. m.

D. C. Smith D. C. & M.

Came to hand same day ifued. Executed by reading the
within summons to J. J. Garrett, J. B. Graham, Louisa
Clardy, Bob Johnson, Pelly Johnson, Austin Oldham,
Green Garrett, & leaving a copy bill with J. J. Garrett,
mch 4. 1874.

Geo. R. Martin D. S.

Came to hand April 1st 1874. Executed on Garrett
Dunlop. April 16. 1874.

J. H. Achey, D. S.

Demurred

Filed mch 11. 1874

The joint demurres of J. B. Graham & J. J. Garrett to
the complainants bill filed against them et al in this
cause. These defendants by protestation not confesing

any of the matters & things in & by said bill complained of to be true in manner & form as therein set forth, say that there is no matter or thing in said bill good & sufficient in law to call these defendants to account for the same in this Honorable court, but that there is good cause for demurres thereunto & they doth demur accordingly & for cause of demurres state:

1st That said bill, in case the same were true contains no matter of equity whereon this court can ground any decree or give complot any relief as against these defendants, there being no matter of equity on the face thereof & no allegation against these defts for which complot has not her clear & unembarrassed remedy at law.

2^d Complot does not by her bill allege that these defendants are molesting or interfering with her in the enjoyment or use of the land mentioned in said bill & therefore seeks to enjoin these defendants from doing a thing which she fails to allege they are doing or are about to ^{do}.

3^d Complot's bill shows that she is in constructive possession of said land or is controlling the same, does not show that these defts are about to commit waste or to damage the land in any way, & seeks to have a question adjudicated in equity which is purely of a legal character, to wit, her title to the land, to establish

which she has a clear + unembarrassed remedy at law.

4th Complt is seeking to obtain a homestead upon land, which she by her bill shows that she is not in possession of or living upon, which land she states is separated from + is not a part or does not adjoin the tract upon which the dwelling is situated + she has no right to claim homestead upon land which is not resided upon.

5th Defts are improper parties to a bill for allotment of dower + there is nothing in said bill to show that they occupy a position to render them proper or necessary parties to such an application in this instance.

6th Complt fails to give such a description of the land as will locate the same, simply referring to public records as exhibits or evidence, which cannot be produced as evidence in court the same being inadmissible.

7th Comptes bill fails to show that she is a poor person unable to give bond or pay the expenses consequent to the filing of her bill, therefore the same should be dismissed, it having been filed in forma pauperis.

For these ^{divers} other reasons errors in said bill contained + appearing on the face thereof, these defts doth devoutly + humbly crave the judgment of this honorable court whether they are compellable or ought to make

any answer therunto otherwise than as aforesaid, & these defendants humbly pray to be hence dismissed with their costs & charges in this behalf most wrongfully sustained.

A. L. Goodlett, Sol.

State of Tennessee.

Be it remembered that at a special term of the chancery court for Montgomery county begun & held at the court house in Clarksville on the second Monday in July 1874, Hon C. G. Smith Chancellor &c presiding, the following proceedings were had

Decree overruling demurres

Rendered July 24, 1874.

Be it remembered that this cause was heard this 24th day of July 1874, before Hon C. G. Smith Chancellor &c upon complainant's bill & the demurres of D. B. Fraherm & D. D. Garrett, and the court being of opinion that said demurres is not well taken, it is ordered that the same be overruled, and that the defendants have until the first Monday in October next to answer said bill

Defendants Fraherm & Garrett except to the ruling of the court upon the demurres.

Answer - J. & G.

Filed Aug. 29. 1874

The answer of D. B. Trahern & D. D. Garrett to the bill of complaint filed against them & others in the chancery court at Clarksville, by Sally A. Garrett.

These respondents saving & reserving to themselves all manner of benefit which might accrue by accepting to the many errors & misstatements in said bill contained, for answer thereto, or to so much thereof as they are advised is material for them to make answer to, answer & say:

that it is true no doubt that complt is the widow of Austin Garrett decd, that he died seized & possessed of two tracts of land lying in Montgomery county Tenn, which land however is not described in & by complt's said bill.

Respondents state that Austin Garrett did execute to them a mortgage upon a tract of land lying in Montgomery county, which land respondents suppose is the same referred to in complt's bill. Respondents state that by the terms of said mortgage they were authorized to advertise said land & sell the same to satisfy the debt which the mortgage was executed to secure, in default of payment, that said Austin Garrett failed to pay said debt & that they advertised the land according to law, & in accordance with the terms of the mortgage, & that they

sold the same publicly at auction at the court house door in the city of Clarksville. Respondents deny that they became the purchasers of said land at said sale, & they state that they were co-partners doing business under the firm name & style of Fraher & Garrett, that at the sale J. B. Fraher became the purchaser & this he did without any collusion & without any thought of fraud as is charged by said bill.

Respondents deny that Cornelt is entitled to any homestead or dower in said land. they state that said Austin Garrett nor his widow nor any of his minor children ever lived upon the same, that there is no house or dwelling upon it, that this tract is not connected with the land upon which Cornelt & said Austin Garrett resided, is on the contrary entirely a different tract of land, & the land upon which Cornelt lives is worth more than one third in value of all the real estate of which her husband Austin Garrett died seized & possessed. they insist that a homestead cannot be set apart embracing land which the party claiming does not reside upon, which is the case in this instance. The Cornelt by her bill has tried to make it appear that this land is a part of the land upon which Austin Garrett lived at the time of his death upon which she now

lives, alleging at the same time that the whole land is not worth 1000£. that she procured wood from said land &c. Respondents state that this is ^{not} a part of the land upon which she lives nor upon which her husband lived but is a tract of land lying 2 miles from the homestead land & is in no way connected therewith. Respondents deny that they have attempted to take possession of said land, further than to sell the same. they have not attempted to cut timber, change the character of the land nor to commit waste in any manner whatever. they are not now, nor have they ever been in possession of it & they were not doing or about to do anything in connection with said land which would entitle her to have them enjoined.

They insist that said ~~had~~ they been in possession of the land, the complainant had her remedy against them by an action of ejectment at law, & had they been guilty of trespassing she still had her remedy by an action at law, quare clausum fregit. in either of which actions the question of title to the land would have been brought in issue. Respondents insist that they are not proper parties to the bill so far as it seeks an allotment of dower & that the same should be dismissed as to them. Now having fully answered they pray to be that the injunction granted against them be dissolved.

that complete bill be dismissed & they dismissed with
their costs in this behalf most wrongfully sustained.

A. G. Goodlett Sol.

J. J. Garratt makes oath that the facts set forth in the
foregoing bill are true & correct to the best of his knowl-
edge information & belief. he states that the same contains
nothing but the truth so far as the points in issue are
involved

J. J. Garratt

Sworn to & subscribed before me Aug 27. 1874.

D. L. Smith J. P.

Admission of conflict

Filed mch 3. 1875

This day the defendants Graham & Garratt appeared for
the purpose of taking the deposition of Euphrates Shelton
whereupon it is admitted by the conflict that the land men-
tioned in the bill does not adjoin the land upon which
the conflict & her husband lived at the time of his death
upon which she has continued to reside, that it lies en-
tirely disconnected from the same. The question as to the
value of the two tracts to be determined, & not taken
into consideration by this admission. This mch 3. 1875.

W. A. Jackson Sol.

Deposition - J. J. Garrett.

For Defts.

Filed April 16. 1875

Quest 1. Are you acquainted with the land which is the subject of controversy in this cause? Ans. I am.

Quest 2. When this land was sold under the mortgage executed to Fraherm & Garrett, did Fraherm & Garrett become the purchasers, or who purchased it? Ans. No, Fraherm & Garrett did not become the purchasers. J. B. Fraherm individually & in his own right became the purchaser.

Quest 3. When J. B. Fraherm became the purchaser did Fraherm & Garrett execute to him a deed to the land? Ans. Yes J. J. Garrett & J. B. Fraherm both signed the deed to J. B. Fraherm, which deed I can produce if required.

Quest 4. Was there any collusion between you & Fraherm in regard to said sale? Ans. None whatever. I did not know anything about the sale nor who had bought the land till I was informed of it by my atty A. G. Goodlett, I will here state that Fraherm & Garrett put the note & mortgage in the hands of A. G. Goodlett for collection he advertised & sold the land. After the sale he came to me to sign a deed stating that J. B. Fraherm had bought the land.

Quest 5. Does this land adjoin the homestead of S. A. Garrett?

Ans. No it does not. it lies some distance from the home tract.

Ques 6. Did Austin Garrett die seized & possessed of any other land in this country? Ans. I cannot positively say.

Austin Garrett stated that the money Fraher & Garrett let him have was to pay for land which he purchased ^{near} ~~near~~ ^{Hoodlawn.}

Ques 7. Does Sally A. Garrett live on the land in controversy? Ans. No, she does not.

Ques 8. Have Fraher & Garrett ever made any effort to dispossess Sally A. Garrett? Ans. No. Fraher & Garrett have nothing to do with said land & I further state that I know that J.B. Fraher, before his death made no such effort.

Ques 9. Is the tract of land upon which Sally A. Garrett now lives worth more than one third of the whole of the land of which Austin Garrett died seized & possessed?

Ans. I think it is. The tract upon which she lives is worth more than the tract in controversy. In this connection I will state that the land which Austin Garrett bought near Hoodlawn was deeded, as I am informed, to his (Austin Garrett's) sons.

Exceptions.

Complet excepts to questions & the answers thereto, no 2, 3, 4, 5. because they are all leading & also a part of answer 4 is not responsive to said question & also to question 6

+ ans. because said answer is merely hearsay, + to 7 + 8 because they are leading, + he prays the judgment of the C. & M. thereon. Exceptions overruled + appeal allowed to Chancellor in open court. P. G. Johnson, C. C. C.

Cross-examined.

Ques 1. Who composed the firm of Fraher & Garratt, to whom ^{Fraher} said land in question was mortgaged? Ans. J. J. Garratt + J. B. Fraher.

Ques 2. Who sold said land + who purchased the same?

Ans. It was sold by J. J. Garratt + J. B. Fraher's atty + purchased by J. B. Fraher.

Ques 3. Did said atty file a bill to sell it or did the mortgage you held on said lands authorize a sale without filing a bill + was it sold under said mortgage without force of law? Ans. It was sold under said mortgage, + the mortgage contained a power of sale without force of law + no bill was filed for said sale.

Ques 4. Is said J. B. Fraher who purchased said land, the same who is a member of the firm of Fraher & Garratt to whom said mortgage was executed? Ans. He is.

Ques 5. You say the atty of Fraher & Garratt sold said land, what do you mean by that? Ans. He sold it as our attorney, that is he advertised it.

Ques 6. What did said Fraher give for said land? Ans. I do not know.

Ques. 7. How was it advertised? Ans. I do not know.

Ques. 8. What did Trahern do with the land after he purchased it? Ans. I do not know, I think he sold it to one Lisenby.

Ques. 9. Do you not know said land was bid off at a very low price & sold in a very short time for a great deal more than it was bid off at? Ans. I do not know what it was bid off at & I do not know what it sold for.

Ques. 10. Did Trahern pay any money on his bid?

Ans. I suppose he did.

Ques. 11. How far is this land from the land on which S. A. Garrett the couplet lives? ^{Ans.} I suppose it is nearly $\frac{1}{2}$ mile.

Ques. 12. What is the land on which you hold a mortgage worth? Ans. There are seventeen or 18 acres & it is worth very little, it has no timber on it hardly & no improvements on it, but I suppose it is worth \$4 or \$5 per acre.

Ques. 13. What is the land on which she lives worth, how much is there of it, & is there any timber on it, if so how much? Ans. There is between 7 & 10 acres of the land on which the couplet lives, & is worth I suppose 15 or 20 \$ per acre, I do not know anything about whether there is any timber on it or not.

Ques. 14. Are you familiar with the two tracts of land, the one you have a mortgage on & the one the

complett lives on? Ans. I am not, I have just seen them
as I passed the road, I never was over either tract of
land, further deponent said not

J. J. Garrett.

State of Tennessee

Be it remembered that at a chancery court for Mont-
gomery county, begun held at the court house in Clark-
sville on the 4th Monday of April 1875, Hon H. H. Burton
chancellor presiding, the following proceedings were had.

Suggestion of Fraher's death

May 5. 1875

Be it remembered this cause was called on this 5 day of
May 1875 before Hon H. H. Burton chancellor, when the
death of D. B. Fraher one of the defendants was sug-
gested admitted in open court.

Continuance -

May 20. 1875

Be it remembered this cause was called on this 20 day of
May before Hon H. H. Burton chancellor, when on appli-
cation of complet said cause is continued until next
term of this court, with leave to complet to take depo-
sitions to be read as evidence in said cause.

Deposition - D. P. Howard.For Compleat
For Deft.Filed July 29. 1875.

Ques 1. Are you acquainted with the land on which S. A. Garratt lives & also the land on which Trahern & Garratt hold a mortgage, which land is now in litigation in this cause. Ans. I am: my land on which I live adjoins the land on which S. A. Garratt the compleat lives & also the tract now in litigation in this cause, my land on which I live divides the land on which Trahern & Garratt hold a mortgage from the land on which the complainant lives.

Ques 2. How many acres are there in the tract on which the compleat lives, & what is it worth? Ans. I think there is about six acres in the tract & I think it is worth about 200¢. There is no timber on it at all, except some fruit trees.

Ques 3. How far from the land on which Sefes Trahern & Garratt hold a mortgage, is the land on which compleat lives situated? Ans. I reckon it is one quarter of a mile.

Ques 4. Where does the compleat get her wood for fuel & where does she get her ground for cultivation? Ans. She gets her wood on the tract of land on which the mortgage is & also cultivates it, she does most of her farming on that portion of the land.

Ques 5. How many acres are there in the tract of land on which the mortgage is & what is it worth? Ans. I think there are about 19 acres in it & I think it is worth about 190¢.

There is but little timber on it, only about 2 acres in timber.
Ques 6. Are both places owned by the same parties, if so how long have they been so owned? Ans. They are both owned by the same parties & have been so owned for 15 or 20 years.

Ques 7. Are they used together as one farm & if so how long have they been so used? Ans. They are used together as one farm & they have been so used ever since Austin Garrett died, who was the husband of Comflet purchased them, I think he bought them together & I know he used them together as one farm until his death, from the time he owned them & they have been so used by his widow since his death and they are so used now.

Ques 8. Are they dependent on each other, if so why? Ans. They are from the fact that the one on which Comflet & her family live is so small it would not be sufficient for her support, nor is there one stick of timber on it & she has to get her fire wood on the one that is in litigation.

D. P. Howard.

Deposition - Geo. Riggins

For Comflet

Filed July 29. 1875.

Ques 1. Are you well acquainted with the land on which Comflet S. A. Garrett lives, & also the land on which

Traherin & Garratt held a mortgage, which last named tract is in this cause. Ans. I am well acquainted with both tracts. I live about 150 yards from one corner of the tract of land on which the complainant lives.

Quer 2. How much land is there in the tract on which the complot lives & what is it worth, & how much is there in the tract on which the mortgage is, & what is it worth. Ans. I think there is about 5 acres in the tract on which complot lives & I think it is worth about 150¢ & there is about 18 acres I reckon in the tract on which the mortgage is & I reckon it is worth about one hundred & fifty dollars.

Quer 3. How far apart are these two tracts? Ans. I reckon they are a little over one quarter of a mile apart.

Quer 4. Are both of these tracts owned by the same parties & used by them as one farm? Ans. They are both owned by the same parties & are so used & have been so owned & used ever since old man Austin Garratt died, who was the husband of S. A. Garratt, owned said tracts of land & they are now occupied & used as one farm by complot & her family.

Quer 5. Are these two tracts of land in any way dependent on each other for use & occupation as a home and farm. Ans. They are —

Quer 6. Why are they dependant on each other for such use & occupation? Ans. Because there is no timber on

the tract on which the complot lives it is too small to afford her her family a support, & she is dependant on the other tract on which the mortgage for her fire wood & all her timber, there being no timber at all on the tract on which she lives & she is dependant on both for land for cultivation.

Crop - examined

Quest 1. Has this widow, the complot, a team of her own, or does she have to hire her hauling & other work?

Ans. She has one mule but no team, she sometimes hires wagons to do her hauling.

Quest 2. Would it not be cheaper for her to buy wood from other persons near her home than it would to hire teams to haul it? Ans. I don't think it would.

Quest 3. Who supports this complot? Ans. She & her brother together, her brother lives on the place with her & cultivates the land.

Geo. Riggins.

Deed and mortgage.

These papers are copied directly from the Books of the Registers Office, that record having been used by consent on the trial of the cause.

O. C. Smith, Secy.
Over

Deed.

I hereby transfer & convey unto Austin Garrett, his heirs forever, for in consideration of the sum of three hundred dollars to me paid two small tracts of land lying district no. 8 Montgomery county state of Tenn. bounded as follows: 1st tract contains six one fifth acres be the same more or less & begins at a stake in the center of the Palmyra road in George Riggins' west boundary line, runs south 61 west 30 poles to a stake, then north 13 east 14 poles to a stone in Wm. Howard's line then north with his line 28 $\frac{1}{4}$ poles to a stake then east 28 $\frac{1}{4}$ poles to a stake in Wm Riggins line, then south 28 $\frac{1}{4}$ poles to the beginning - 2^d tract contains 19 acres be the same more or less & begins at a black oak on the side of the Kentucky Landing road runs north 19 west 31 poles to a stake & two black oak pointers, thence east 101 poles to a black oak pointers, Alabama's corner, thence south 32 $\frac{1}{2}$ poles to the beginning & I agree to forever warrant & defend the title of said lands against all lawful claims whatever. I set my hand & seal - this 10 day of Novr 1870.

attest J. R. Cooley
Lemuel Cherry.

Wm M. Shelton Dir

State of Tennessee - Montgomery county.

Personally appeared before me Peter Neal clerk of the

county court of said county, Wm M. Shelton Junr &
L R. Cooley, subscribing witnesses to the within deed
being first sworn deposed & said that they are acquainted
with Lemuel Cherry the within named bargainer & that
he acknowledged the same to be his act & deed upon the
day the same bears date, for the purposes therein contained.
Witness my hand at office this 18 day of Nov 1870

Peter Omeal, Clerk.

Received at 9 o'clock A.M. Nov 18. 1870 properly
stamped, Registered Nov 18. 1870

J M. Rogers R. M. C.

Book 13- page 415.

Mortgage

I, Austin Garrett col, have this day bargained & sold
& as hereby transfer & convey to Graham & Garrett for the
consideration hereinafter named mentioned one piece of
land containing about 19 1/2 acres of land, situated in
Montgomery county Tenn bounded as follows, by Mrs
Howard et. al Mrs Burgess, N. by Greenhill, S. by Wm
Lisenbee the above land was formerly belong to or own
by E. Price, but this conveyance is made for the follow-
ing purpose & no other that is to say, I am indebted to

the said Trahern & Garrett for balance on note & interest from date. amt of balance \$122.³⁵. now if I should pay or cause to be paid to the said Trahern & Garrett all the above note & interest thereon by the 1st day of January 1873 then this mortgage is to be void, but if I should not pay to the said Trahern & Garrett the amount of said note & interest thereon then the said Trahern & Garrett after advertising by printed or written hand bills for ten days, are authorized to sell the said tract of land herein mentioned to the highest bidder for cash on the before mentioned land & after paying the costs of advertising &c. & the amount herein mentioned they will pay the balance if any to me. This 15 day of April 1872.

Austin ^{his} Garrett
mark.

attest, W. C. Culverhouse

W. H. Smith

State of Tennessee - Montgomery county.

Personally appeared before me Peter Oneal clerk of the county court of said county, W. C. Culverhouse & W. H. Smith subscribing ~~witnesses~~ to the within instrument who being first sworn deposed & said that they are personally acquainted with Austin Garrett col, the within bargainer & that he acknowledged the same in their presence to be his act & done upon the

day it bears date. Witness my hand at office in
Clarksville, this 18th day of April 1872.

Peter O'Neal, Clerk,

Received at 9 o'clock A.M. April 18. 1872 properly
stamped, Registered April 18. 1872.

J. M. Rogers, A.M.C.

Trust and book no 1. page 289.

State of Tennessee

Be it remembered that a chancery court for Montgomery
county begun held at the court house in Clarksville on
the second Monday in November 1875. Hon H. H. Burton
chancellor presiding, the following proceedings were had, to wit

Pro. confesso.

Dec 3. 1875

Be it remembered, this cause was again called on this 3
day of ~~Dec~~ 1875 before Hon H. H. Burton chancellor &c
when it appearing to the court that the defendants Louisa
Clardy, Bobb Johnson wife Pally Johnson, Garrett Dunlop
Austin Alaham & Green Garrett have all been regularly
served with copy to answer Comptes bill & said defts have
failed to appear & answer said bill within the time re-
quired by law, it is therefore ordered by the court that a
bill be taken for confessed as to them & the cause set for
hearing ex parte.

Final Decree.Rendered Dec 3. 1875

Be it remembered, this cause came on to be finally heard before Hon H. C. Lorton Chancellor on this 3 day of Decr 1875 on the bill, answer, exhibits, proconfesses & proof in the cause; & upon argument by counsel in the cause it appearing to the court that the complainant is the widow of Austin Garrett decd, who died seized & possessed of the following described real estate, to wit, two small tracts of land lying in the county of Montgomery & state of Tenn: the first containing about $6\frac{1}{2}$ acres & bounded as follows: beginning at a stake in the center of the Palmyra road in George Riggins west boundary line, runs thence south 1st west 30 poles to a stake, then north 13 east 14 poles to a stone in M. Howard's line, then north $28\frac{1}{4}$ poles to a stake, then east $28\frac{1}{4}$ poles to a stake in Hon Riggins line then south $28\frac{1}{4}$ poles to the beginning: the second containing about 19 acres & bounded as follows: beginning at a black oak on the west side of the Kentucky Landing road runs thence north 19 west 31 poles to a stake & two black oak pointers, then east 101 poles to a black oak & pointers, Alabama's corner, then south $32\frac{1}{2}$ poles to the beginning: and it appearing to the court that the defendants Fraher & Garrett have a mortgage on the

last named tract of land which was executed by Austin Garrett dec'd & that the complt was not a party to said mortgage & it further appearing that the defendants Fraherm & Garrett are seeking to subject said tract of land to the ~~unjust~~ satisfaction of their said mortgage & that the complt filed her bill to restrain them from interfering with her in the use & occupation of said land, & it also appearing that both tracts of land mentioned in the pleadings are not worth 1,000⁰⁰ & that the complt as the widow of Austin Garrett dec'd is entitled to homestead & dower in said land:

The court is therefore of opinion & doth so order, adjudge & decree that said Fraherm & Garrett took said last tract of land encumbered with the complt's life estate therein, & the court doth order, adjudge & decree that the complt is entitled to a life estate as dower & a homestead in both tracts of land & that the defendants Fraherm & Garrett on the deft J. D. Garrett as surviving partner of the firm of Fraherm & Garrett, be & he is hereby perpetually enjoined from interfering with the complt in the use & occupation of said last tract of land during the natural life of complt. & said deft is also enjoined from interfering with the use & occupation of said land as against the minor child or children of complt until

each & all of said children shall have reached the age of twenty one years: & it is also ordered by the court that the complete record of the debt J. J. Garrett as such surviving partner, all the costs in this behalf expended.

From which the defendant J. J. Garrett prays an appeal to the next term of the Supreme court of Tennessee which is allowed upon his entering into bond & security on or before the January rules.

Appeal Bond.

Know all men by these presents that we J. J. Garrett surviving partner & A. S. Goodlett of the county of Montgomery & state of Tennessee are held firmly bound unto Sally A. Garrett in the sum of five hundred dollars current money of said state to be paid unto the said Sally A. Garrett, for payment of which we bind ourselves, our heirs, executors, administrators &c firmly by these presents sealed with our seals & dated the 22 day of Decr 1875. - The condition of the above obligation is such that whereas on an injunction bill prosecuted in the chancery court at Clarksville by Sally A. Garrett complete against Fraher & Garrett debts, a decree was rendered by said court against J. J. Garrett surviving

partner of Graham & Garrett, on Decr 3. 1875, from which decree the said Garrett surviving partner prayed an appeal to the next term of the Supreme court to be held at Nashville; Now if the said J. J. Garrett surviving partner shall prosecute said appeal with effect or in case of failure therein shall pay & satisfy all damages & costs which may be awarded against him for wrongfully prosecuting said appeal then the above obligation to be void, else to be & remain in full force & effect. Signed sealed & delivered, the day & date above written.

J. J. Garrett surviving partner
A. G. Goodlett.

Bill Costs

State tax	5.
Johnson cou Bill 25 aff 25. Dig 1 ⁰⁰ sp ^a ans 15 ⁰⁰ copy bill 10 ⁰⁰ enroll 15 ⁰⁰ demur 25. enroll 75 docket 80 decr 85 ans 25 aff 25 enroll 15 ⁰⁰ contin 50 depositions 3 ⁰⁰ certificate 25 seal 50 orders 75. app bonds 75 transcript 7 ⁰⁰ Bill costs 50	23.15
J. R. Martin Sp ^a ans 7 ⁰⁰ nonest 25 Dig 2 ⁰⁰ notice 15 ⁰⁰ sp ^a test 50	10.75
J. H. Achey Sp ^a ans	1.
J. P. Howard witness 1 day 15 ⁰⁰ toll 10	1.10
Geo. Riggins " 1 "	1.
<u>Forty two dollars.</u>	<u>\$42.00</u>

State of Tennessee-Montgomery county.
I, Polk G. Johnson clerk & master of the chancery
court at Clarksville, in & for said county, do hereby
certify that the foregoing thirty one pages contain a
full, perfect & true transcript of the record & bill of costs
remaining in my office in the cause of Sally A. Gar-
rett v. Fraher & Garrett et al.

Given under my hand & seal of office, at office
in Clarksville, this the 28th February 1876.

Polk G. Johnson Clerk

Index

Answer	11
Admission of copy	14
Bill, C & D	1
Bill of costs	31
Bond, appeal	30
Continuance	19
Demurres	7
Decree overruling demurres	10
Decree pro confesso	27
Decree, final	28

Deposition, Garratt	15
Deposition, Howard	20
Deposition, Riggins	21
Deed & mortgage	23
Injunction	5
Spa ans	6
Suggestion of Graham's death	19