

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-07-5211

Soloman Johnson, et al.

The Heirs or Devises of Soloman White, et al.

(See document for all the names)
 PLAINTIFF(S)

(See document for all the names)
 DEFENDANT(S)

Submitted by: J. THOMAS MIKELL
 P.O. Box 1727
 Beaufort, S.C. 29901

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

RECEIVED

OCT 13 2014

2014 OCT 13 PM 1:33

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|---|--|
| Soloman Johnson, et al. | See Final Decree attached. | \$Not Applicable |
| See Final Decree for all the names | Heirs or Devises of Soloman White and Mary Ann Pinckney and others. | A Decree in partition and injunction was issued. |
| | | \$ |
| | | \$ |

If applicable, describe the property, including tax map information and address, referenced in the order:
 Parcel One – 30 acres. Plat Book 133 Page 129. R700 013-000-0006.
 Parcel Two – 10 acres. Plat Book 53 Page 82. R700-013-000-0024.

The judgment information above has been provided by the submitting party. Dispute concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Judge Marvin H. Dykes, III
Master In Equity

3069
Judge Code

August 18, 2014
Date

For Clerk of Court Office Use Only

11-5211

This judgment was entered on the 18th day of Aug, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 29th day of Aug, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

J. Thomas Mikell

None

PO Box 1727

Beaufort, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Therese A. H. S. C. / Staff
CLERK OF COURT

Court Reporter: None

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Final Trial held on August 5, 2014.

Lined area for additional information regarding the decision by the court.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-5211

SOLOMON JOHNSON, FRANK JOHNSON,)
RUTH GREEN, DOROTHY JONES,)
THERESA SCOTT, ERMA JOHNSON)
KELLY, BARBARA JEAN FERGUSON a/k/a)
BARBARA JEAN ALBERGOTTIE,)
ALPHONZO ALBERGOTTIE, DAVID)
PRINGLE, PAULINE LESESNE, MARION)
PRINGLE, JR., FREDERICK SCOTT, PAUL)
K. SCOTT, HAROLD JONES, SANDRA)
WILLIAMSON POWELL, FREDERICK L.)
WILLIAMSON, ELVIN BENNETT, JANIE L.)
GANUES, BERTHA STAFFORD, PATRICE)
STAFFORD, MARY LEE GARY, ALNETHIA)
GARY, EDWARD STANLEY STAFFORD,)
LUERTA GARY, KENNETH GARY,)
CARLOS GARY, RON KENNETH)
STEWART, MARY FRANCES DUNCAN,)
DEBRA WILLIAMS, LARRY WILLIAMS,)
BARBARA WILLIAMS SMITH, JOHNNIE)
WILLIAMS, TERRI ELAINE WEAVER,)
LETHA G. RHEM, PATRICIA ANN WHITE,)
SHARON WHITE, NOLEN WHITE, JOHNNY)
WASHINGTON, JR.)

Plaintiffs,)

-versus-)

THE HEIRS OR DEVISEES OF)
SOLOMON WHITE; MARY ANN PINCKNEY)
WHITE; EDWARD WHITE, JACOB WHITE,)
MARY WHITE; CARRIE WHITE; ELLEN)
WHITE GARY; SAM GARY; EMMA GARY)
JOHNSON; MILLER JOHNSON, SR.;)
OSCAR JOHNSON; ELOISE JOHNSON;)
MILLER JOHNSON, JR.; LEOLA)
JOHNSON; RICHARD (RITCHIE))
JOHNSON; SARAH H. JOHNSON; MACK)
COLES; EMILY JOHNSON ALBERGOTTIE;)
ROBERT ALBERGOTTIE; LOUISE)
JOHNSON PRINGLE; MARION PRINGLE;)

FINAL DECREE



MAMIE GARY; THOMAS BROWN; CARRIE)
SCOTT; CLARENCE SCOTT; JESSIE MAE)
SCOTT SMALLS; WILLIAMS SMALLS, JR.;)
NATHANIEL SCOTT; CAMERINE SCOTT;)
HERMON V. SCOTT; LUTHER SCOTT;)
EARNESTINE STEWARD; EPSTEIN)
STEWARD; LONNY BROWN; GUSSY)
BROWN; CHARLES BROWN; DANZA)
GARY; VICTORIA BROWN; DOROTHY)
WILLIAMSON; JOSEPH WILLIAMSON,)
SR.; ELIJAH WILLIAMSON; JOSEPH)
WILLIAMSON, JR.; HELEN (SWEETIE))
BROWN BENNETT; ERVIN BENNETT;)
JANIE BENNETT GREEN; ELOISE)
BENNETT NIXS; BENJAMIN NIXS; TERRY)
NIXS; CARRIE GARY; HARRY JULIUS;)
RICHARD GARY; FRONNIE GARY; ELLA)
GARY; FRANCIS GARY; FLORENCE)
(NANA) GARY; ALETHA (TINY) GARY)
WATSON; ANDREW GADSDEN; FRANK)
WATSON; ELIZABETH GARY STAFFORD;)
LEE STAFFORD; JOHN LEE STAFFORD;)
JOSEPH GARY; NEHEMIAH GARY;)
DOROTHY GARY; HAROLD GARY;)
CLEVELAND GARY; HENRY GARY;)
FLORRIE GARY; NAOMI GARY)
STAFFORD; JAMES STAFFORD, SR.;)
HATTIE MAE STAFFORD; EDNA)
BROOKER; HENRY BROOKER; INELL)
JONES; RAYMOND JONES; JAMES)
STAFFORD, JR.; HAZEL GARY; HENRY)
GARY, JR.; HENRY GARY, III; HERMAN)
GARY; MARY ELLEN GARY WILLIAMS;)
HERBERT WILLIAMS, SR.; HERBERT)
WILLIAMS, JR.; LOUISE GARY WHITE;)
JIMMY WHITE; LOU ETHEL)
WASHINGTON; MARGARET GARY)
LEVINE; DAVID LEVIN; EDDIE JAMES)
GARY; WILHELMINA GARY MURRAY;)
EZEKIEL MURRAY, SR.; JOSEPHINE)
GARY JENKINS; EDDIE JENKINS; JOE)
LOUIS GARY; HEIRS OF DAVID PRINGLE;)
SALT MARSH PARTNERS, L.P.; JANICE E.)
JONES AND RALPH E. JOHNSON;)
BOBBIE J. COLLINS; LEORY NORRIS)
AND ODIS ANN NORRIS; M. LANE)

A

MORRISON; MILLS LANE MORRISON)
AND BANK OF AMERICA, N.A., AS)
TRUSTEES; BEAUFORT COUNTY OPEN)
LAND TRUST; WILLIAM MCLEAN MIXON)
AND BARBARA HILL MIXON, AS)
TRUSTEES OF THE MIXON REVOCABLE)
TRUST AGREEMENT DATED JULY 24,)
2008; ROBERT J. PINCKNEY; MAMIE)
BROWN, SUSIE CORDEAUX, DOROTHY)
LESESNE, BEN PINCKNEY,)
CHRISTOPHER PINCKNEY, ETTA)
PINCKNEY, HENRY PINCKNEY, HERBERT)
PINCKNEY, ERNESTINE P. ROGERS,)
LILLIE SHELL, AND RUTH P. SIMMONS;)
RICHARD JOHNSON, JR.; HELEN COLES;)
FORESTINE PRINGLE; SANDRA SMALLS;)
JACKIE SMALLS; SHARON SMALLS;)
ANDREA SMALLS; BROOKE SMALLS;)
ALLAN SCOTT; CLEON SCOTT; NIA)
MALIKA SINGLETARY; LORETTA L.)
STEWARD; NATHAN JONES; ERIC)
WILLIAMSON; DWAYNE WILLIAMSON;)
AUDREY BROWN; JOSEPH JOHNSON;)
JACQUELINE JOHNSON MAJOR;)
ROBERT LEE GREEN; KENNETH GREEN;)
JUANITA GREEN; KEITH GREEN; JOSEPH)
GREEN; ELLIS GREEN; CARL GREEN;)
BROWN BENNETT; DORSEY BENNETT;)
WILLIAM NIXS; JENNIFER NIXS; JASON)
NIXS; THADDAUS NIXS; EDWARD NIXS;)
CHARLES NIXS; ALTHEA NIXS; CLARA)
GARY; FRANCIS GARY, JR. ; ADELIA)
GARY; CHARLES GARY; ALBERT GARY;)
ULYSSES GARY; BERNARD GARY;)
DAVID GARY; ANNETTE SINGLETON;)
LILLIE MAE GIFFORD; SHAWNDEA)
STAFFORD; JAMES STAFFORD;)
BEAULAH GADSDEN; JORDAN HARRIS;)
LEON STAFFORD; ALVIN BROOKER;)
MICHAEL STAFFORD; SHIRLEY)
STAFFORD WHITE; GAIL STAFFORD)
MARQUEZ; JACQUELINE STAFFORD;)
STEPHANIE JONES; RENATA JONES;)
RANELL JONES; GERMAINE JONES;)
NATHANIEL STAFFORD; ANGELA)
STAFFORD; SONYA GREEN; JAMES)



STAFFORD, III; RASHEEN JAMES;)
JUSEAN JAMES; KIERRA STAFFORD;)
LENA (EVELYN) GARY; BRENDA)
PATTERSON; JEANETTE RUTLEDGE;)
ISSAC WILLIAMS; CAROLYN)
ACHAMPONY; ANTOINETTE LEWIS;)
GERALDINE BROWN; JOHNNY)
WASHINGTON; KURT WASHINGTON;)
DIANE GARY; TRACY WASHINGTON;)
CARREN WASHINGTON; LUNETHA)
GARY; JAMES STANLEY GARY; GERALD)
R. GARY; if living, and if not living, then)
the heirs or devisees of all such persons)
named above; and all persons unknown)
having or claiming to have any right, title,)
estate, interest in or lien upon the real)
property described in the Complaint)
herein, being designated collectively as)
JOHN DOE and MARY ROE, including all)
persons who may be deceased, minors, in)
the Armed Forces of the United States,)
Non Compos Mentis, and under any other)
disability,)

Defendants.)

INTRODUCTION

Due to the fact that there are numerous persons involved in this case, there are several complex issues, and the amount of testimony on each issue was voluminous; there have been several previous hearings in this case. First, there was a trial on April 22 and 23, 2013, from which a Partial Decree was issued in which the claim of ouster by the Richard Gary Defendants was rejected by the Court. Second, there was a Motion by the Plaintiffs to establish the Eastern boundary line of the 30 acre parcel of land heard on April 23, 2013 resulting in an Order of May 2, 2013 stating, inter alia, (a) that the Richard Gary Defendants were to pay \$1,000.00 to Salt Marsh Partners (the boundary owner), (b) the disputed boundary line was stated to be on a plat by David S. Youmans, SCRLS, of March 5, 1998 revised March 15, 2013, (c) all of the heirs of Solomon White were enjoined from moving any survey monuments or entering the land of Salt Marsh Partners, and, (d) it



would be contempt for any violation of the Order. Third, there was a Motion by Salt Marsh Partners against the Richard Gary Defendants for contempt of the Order of May 2, 2013, which resulted in a hearing on August 1, 2013 and an Order of August 5, 2013 holding (a) David Gary and Bernard Gary in contempt, (b) these same two Defendants to pay Salt Marsh Partners \$2,500.00 in 30 days, and (c) these same two Defendants to remove a fence they installed on the land of Salt Marsh Partners by August 5, 2013 at 5:00 p.m. These same two Defendants subsequently purged themselves of the contempt. Next, the Plaintiffs moved to have the Heirs of Solomon White and Mary Ann White determined with a hearing on March 5, 2014 which resulted in an Order of March 11, 2014 that determined the heirs. Lastly, the Plaintiffs have moved for an Order of Partition by Motion served on the Richard Gary Defendants on June 30, 2014. A hearing was held on August 5, 2014 at 9:30 a.m.

Of note in this case has been the representation by attorneys for the Richard Gary Defendants. They were first represented by Joseph Dawson, III, Esquire who moved to be relieved as counsel which motion was granted by Order dated January 17, 2013. At the two-day trial in April of 2013, they were represented by Karl H. Smith, Esquire of Darlington, South Carolina who subsequently moved to be relieved of counsel which motion was granted by Order of March 13, 2014. These Richard Gary Defendants then appeared at the hearing of August 5, 2013 for contempt brought by Salt Marsh Partners, but they did not have an attorney. Notwithstanding proper notice of the hearings on both of the Motions to Determine Heirs and For a Partition, the Richard Gary Defendants did not appear nor did an attorney appear for them.

At the hearing on August 5, 2014 for a Partition, there were six Plaintiffs in attendance with their attorney, J. Thomas Mikell, together with a witness, David Youmans, South Carolina Registered Land Surveyor. Testimony was taken from the surveyor which testimony was agreed to by all of the Plaintiffs in attendance. It was also represented to the Court that the testimony of the surveyor was consented to by all of the branches of the family except the Richard Gary branch. Those in concurrence are all five of the six family branches of (1) Emma Johnson, (2) Mamie Gary, (3) Aletha Watson, (4) Nehemiah Gary, and (5) Henry Gary. There were five exhibits entered into the record consisting of (1) a list of the family branches, (2) a 1993 survey (L-0977) of the ten acre parcel prepared by Niels

Christensen, IV, SCRLS, (3) a survey of the thirty acre parcel dated 2007 (L-6254) prepared by Zyad Khalil, SCRLS, (4) an ariel photograph, and (5) a list of the persons present.

Based on the pleadings, the testimony, and the exhibits presented on August 5, 2014, I render these Findings of Fact, Conclusions of Law, and issue this Final Decree.

FINDINGS OF FACT

1. The real property which is the subject of the Motion to Partition is described on Attachment A to the Complaint and consists of two parcels of real property situate in Beaufort County, South Carolina.

2. The two parcels of land consist of a ten acre parcel described on a plat recorded in Plat Book 53 at Page 82 prepared by Niels Christensen, IV, SCRLS, on December 22, 1993 (L-0977) and a thirty acre parcel described on a plat recorded in Plat Book 133 at Page 129 prepared by Zyad Khalil, SCRLS, on January 22, 2007 (L-6254).

3. The Plaintiffs represent five of the six branches of the family of Solomon White and Mary Ann White or 83.34% of the owners of both parcels of land. The Richard Gary Defendants represent one of the six branches of the family or 16.66% of the owners of both parcels of land. The Richard Gary Defendants are (a) Ulysses Gary, (b) David Gary, (c) Annette Gary Singleton, (d) Clara Gary, (e) Adelia Gary, (f) Charles Gary, (g) Francis Gary, Jr., (h) Albert Gary, and, (i) Barnard Gary.

4. As shown by a Certificate of Mailing and Notice of Motion mailed to all of the Richard Gary Defendants on June 30, 2014, by the Plaintiff's attorney, notice of the Motion to Partition the land as well as the date, time and place of the hearing were given more than thirty days prior to August 5, 2014.

5. Several of the Gary Defendants reside on the thirty acres. Six of them have the same mailing address located on the site and one of them has a separate address that is on the site.

6. The Notice of Hearing was at 9:30 a.m. on August 5, 2014. None of the Richard Gary Defendants appeared at that time. At 9:45 a.m., I had Deputy Sheriff Bobby Edwards call the case in the lobby of the Beaufort County Court House three times. None of the Richard Gary Defendants made an appearance at the hearing, nor did they communicate in any manner with the Court about the hearing, nor did an attorney appear or communicate for them with the Court.

7. As there are six branches of the family and approximately forty acres in total, an equal acreage division as recommended by the surveyor and agreed to by five of the six family branches will be approximately 6.6 acres per family branch. This seemingly easy solution is made more difficult by these factors:

- a. Prescott Road runs across the thirty acre parcel North to South which decreases the usable acreage of thirty acres.
- b. Several members of the Richard Gary branch of the family occupy an area as a group that is separated by Prescott Road on the thirty acre parcel and then another member of that branch (Annette Singleton) occupies another area separate from those in the group, i.e., they are not all together in one area.
- c. There is a large area occupied by Solomon Johnson of the Emma Johnson family branch on the thirty acre parcel.
- d. While not occupied, there is still a house on an area formerly lived in by the Henry Gary branch.

8. The ten acre parcel described on the Christensen plat is all in one parcel without encroachments or occupation. Thus, a partition is without any hindrance. Mr. Youmans and five of the branches of the family recommend that it be divided equally between the three branches of the family that are Aletha Watson, Nehemiah Gary and Mamie Gary with an appropriate access/utility easement.

9. After considering the factors set forth in Paragraph 7 above, Mr. Youmans has created a division of the thirty acre parcel that is drawn on Exhibit Three. The members of the five family branches present on August 5, 2014, concur with the division recommended by Mr. Youmans for this parcel.

10. The recommended division of the thirty acre parcel would allot parcels marked on Exhibit Three in approximately this manner:

- a. Three acres to the family branch of Aletha Watson.
- b. Three acres to the family branch of Nehemiah Gary.
- c. Three acres to the family branch of Mamie Gary.
- d. Six acres to the family branch of Richard Gary.
- e. Six acres to the family branch of Emma Johnson.
- f. Six acres to the family branch of Henry Gary.

11. All of the matters involved in the division of the land as set forth herein is dependent on a new survey of both the ten acre parcel and the thirty acre parcel which shows (a) easements for entry/utilities, (b) the location of Prescott Road, (c) the separate areas of occupation of (i) Solomon Johnson, (ii) the two Richard Gary family areas of occupation, (iii) the Henry Gary area of occupation, and, (d) the correct Eastern Boundary line of the thirty acre parcel.

12. The surveyor is to prepare a new survey of both the ten acre parcel and the thirty acre parcel reflecting those matters in Paragraph 11 above and present it to the Court for final approval and recording.

13. Due to several oral confrontations between the Richard Gary family branch members and the Emma Johnson family branch members (and other heirs), and, the same kind of confrontations (to include a citation for contempt of court) in the boundary disputes with Salt Marsh Partners, all of which is on record in previous hearings in this case, the Plaintiffs moved the Court on August 5, 2014 to enjoin all parties to the action and all occupants of the parcels of land from any interference with any other family branch members at this time or from interfering with the different parcels of land as determined by the new survey hereafter.

The surveyor joined in this Motion citing interference directed at him by the Richard Gary family members when he was conducting the surveys for Salt Marsh Partners in accordance with the previous hearings in this case.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter and the parties to this action per Section 15-61-50 S.C. Code of Laws, 1976, as amended.

2. While the Richard Gary family members (nor an attorney representing them) were not present on August 5, 2014, the record indicates they were given notice of the Motion to Partition and notice of the date, time and place of the hearing on the Motion.

3. Section 15-61-50 S.C. Code of Laws, 1976, as amended, authorizes this Court to make the partition in kind or by allotment. Due to the desire of five of the six family branches present on August 5, 2014, and based upon the recommendations of the surveyor, I conclude that it is in the best interest of all parties to make a partition by allotment of the land to the six family branches in six shares.

4. The recommendations of the method of partitioning the ten acres and the thirty acres presented by the surveyor on August 5, 2014, which were joined in by five of the six family branches were made after careful consideration of (a) the current locations

of family member occupancy on the different sites, (b) previous locations of occupancy by the family members on different sites, (c) the location of several public roads, (d) the means of access to the various family areas of occupation, and, (e) the desires of the vast majority of the family members as to their choices of how to partition the land.

5. I conclude that the recommended partition is stated in Exhibits Two and Three to the hearing held on August 5, 2014, and that the recommended partition has been done (a) fairly, (b) impartially, (c) with as little injury to any heir as possible, (d) reasonably, and, (e) equitably.

6. The surveyor, David S. Youmans, SCRLS, is to prepare a new survey to reflect all of the details as to footages, bearings, acreages, entry/utility easements, and other matters as set forth on Exhibits Two and Three to the hearing of August 5, 2014, for the ten acre and thirty acre parcels of land. Upon completion of that survey, the surveyor is to present it to the Court for approval.

7. Due to the previous altercations and confrontations on site between some of the parties to this case and the Salt Marsh Partners officials and the surveyor, it will be in the best interest of all parties for the Court to issue an injunction that none of the parties should communicate with each other about the land, nor about this suit, nor about any subjects related thereto.

DECREE

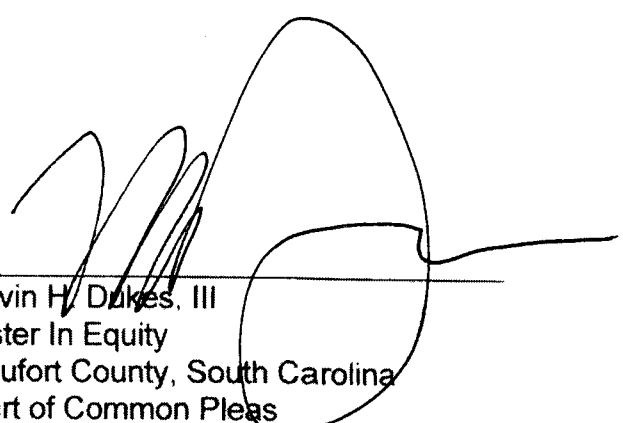
It is hereby ORDERED, ADJUDGED AND DECREED as follows, to-wit:

A. The ten acres of land and the thirty acres of land shall be partitioned pursuant to the recommendations of David S. Youmans, SCRLS, to the six family branches as set forth on Exhibits One, Two and Three to the hearing held on August 5, 2014.

B. In order to have the details of the partition set forth on a survey stating the footages, bearings, acreages, and other necessary information to reflect the partition, David S. Youmans, SCRLS shall prepare a new survey at the expense of the six family branches shared equally and present it to the Court for approval prior to recording.

C. All of the parties hereto are enjoined and directed, upon penalty of contempt, to abstain, cease and desist from ~~communicating~~ ^{unwelcome communication} with each other, in writing or orally, about (a) this law suit (even after it is concluded), (b) about the survey to be prepared, or (c) about the partition of the land. 2

Executed on August 18, 2014.



Marvin H. Dukes, III
Master In Equity
Beaufort County, South Carolina
Court of Common Pleas