

1882-03

Southampton County Chancery -

Bradshaw, Eli vs Gardner, E. T.

Suit to enjoin & restrain the
sale of personal property -

Cobb, James E.

To the Hon. E. C. Garrett, Judge of the
County Court of Southampton County.

Your Complainant, Eli Bradshaw,
of the said County of Southampton, hum-
bly complaining sheweth to your honor,
as follows: That E. J. Gardner, of the same
county, at a Court held by a Justice of
the Peace in said County on the 12th
day of November A. D., 1881, on an open
account, recovered judgment against your
Complainant - a copy of all which is here-
with filed, marked A and B, and prayed
to be taken as parts of this bill; That
execution immediately issued on said
judgment and was placed in the hands
of Wm. Pittman, Constable, to be levied;
That sometime previous to judgment ob-
tained, your Complainant had claimed
the benefit of the homestead exemption
against the said open account, by virtue
of the Constitution and Acts of Assembly
passed in pursuance thereof, and had
recorded his deed in the Clerk's Office of
Southampton County - a copy of which is
herewith filed, marked C and prayed
to be taken as a part of this bill; That
the said Wm. Pittman, Constable, by reason

of these facts and Circumstances refused to levy the said execution and required an indemnifying bond, which being accordingly given, he levied on the following property, to-wit: Thirteen hundred pounds of seed cotton and one Gray Horse, and then proceeded to advertise the sale of the same to take place on the 8th and 19th days^{of} December 1881 respectively;

Your Complainant further states to your honor that the horse, charged against him in the said open account, was never sold to him by the said E. J. Gardner nor has he any lien on the same either express or implied, and no right, title or interest whatsoever ~~in~~ or to the same, either in equity or at law; That your Complainant bought the said Horse of one James E. Cobb of this (Southampton) County, as his receipt for the purchase price thereof will fully show - a copy of which is herewith filed, marked D. and prayed to be taken as a part of this bill; That your Complainant is informed that the Claimer of the homestead is a full and complete bar ~~to~~ any recovery on the said account, and that, therefore, the indemnifying bond^{given} by the said E. J. Gardner was illegal

and should not have been sued out;
That your Complainant, in the light
of these circumstances, is advised to re-
strain and enjoin the sale or removal of
the said property by the said E. J. Gar-
dner and Wm. Pittman, Constable as afore-
said, from him in any manner whatso-
ever; That your Complainant is a very
poor man and has a large and ex-
pensive family, and that, the sale or
removal of ~~this property~~ at this
time, would be attended with irrepara-
ble injury and greatly embarrass him;
That in consequence of the long drought
last summer his crop was seriously
damaged, and that, so small was the
yield, that he was unable to harvest
sufficient to enable him to provide
necessaries for the next year and make
a crop without subjecting himself to
pecuniary liability.

Forasmuch, therefore, as this is con-
trary to equity and conscience, and as
your Complainant is remediless save
in a Court of Chancery, where mat-
ters of this kind are properly cogniz-
able, your Complainant prays that
the said E. J. Gardner and Wm. Pittman

constable as aforesaid, may be made parties, defendants, to this bill, and be required to answer the same on oath as fully and particularly as if they had been thereto specially interrogated; and that they be enjoined and restrained from selling, removing, or permitting to be sold or removed any of the said thirteen hundred pounds of seed cotton, or horse of your complainant.

And that such other and further relief may be granted to your complainant as is adapted to the nature of the case, and agreeable to equity and good conscience. And as in duty bound your complainant will ever pray &c.,

May it please The Court &c.,

Wm. H. Parker. pqr.
" "

Virginia:

Southampton County to wit:

This day Eli Bradshaw appeared before me and made oath that the allegations set forth in the foregoing bill are true to the best of his knowledge & belief.

Given under my hand this 7th day of Dec. A. D., 1881.

J R Edwards clk

Madshaw¹²¹

vs $\frac{3}{3}$ Bell & Exhibits

Gardner

"

1881 December 7 Bell &
filed bond & given to Injun &
issued

Eli Bruckhaus

Deed of Homestead

(Exhibit C)

Know all men by these presents, that I, Eli Bradshaw, of the County of Southampton and State of Virginia, being a householder and head of a family, by virtue of an Act of the General Assembly of Virginia approved June 27th 1870, do hereby set apart and claim as a Homestead and Personal Property, for the benefit of myself and family, exempt from levy, seizure, garnishing or sale, under any execution, order, or other process, issued on any demand for any debt heretofore contracted, the following articles, to wit: All my crops now in the field and ungathered, consisting of about sixty barrels of corn, of the value of one hundred and eighty dollars, three thousand pounds of fodder of the value of thirty dollars, three thousand pounds of cotton of the value of one hundred and five dollars, ten bushels of corn field peas of the value of seven dollars, thirty bushels of sweet potatoes of the value of fifteen dollars, also one steer of the value of twenty five dollars, one yearling of the value of five dollars, provisions on hand of the value of ten dollars, two horses of the value one of forty dollars and the other of eighty dollars, eighteen hogs of the value of thirty dollars, farming implements of the value of twenty five dollars and household and kitchen furniture of the value of sixty dollars, said property of the total value of six hundred and twelve dollars.

Given under my hand this 18th day of October
A.D. 1881

Eli Bradshaw (seal)

State of Virginia
County of Southampton to wit:

I W^m H Parker a Commissioner
in Chancery of the Circuit Court of the County of
Southampton and State of Virginia, do hereby
certify that Eli Bradshaw whose name is signed
to the foregoing writing bearing date Oct. 18th
1881, personally appeared before me in my County
aforesaid and acknowledge the same to be his
act and deed.

Given under my hand this 18th day of Octo 1881

W^m H Parker
Comm in Chancery

Southampton County. In the Clerk's Office
October 18th 1881. This Deed of Homestead of Eli
Bradshaw's under an act of the General Assembly
was this day received and with the certificate
thereto annexed admitted to record.

Wm L R Edwards clk
A Copy
Wm L R Edwards clk

Bradshaw

vs $\frac{3}{4}$ Injunction

Gardner

"

Upon the Complaint, Eli Bradshaw's
entering into and acknowledging a bond
with good security, in the Clerk's Office
of the Circuit Court of Southampton
County, before the Clerk of said Court,
in the penalty of one hundred
and twenty six 90/100 dollars, Condi-
tioned to pay all costs and damages
which shall be awarded against him
in case the injunction herein men-
tioned shall be dissolved, an injunc-
tion is granted in pursuance of the
prayer of the bill within contained,
to restrain and prohibit the within-
named E. J. Gardner, ^{and Wm. Pittman, Constable,} from selling,
removing, or permitting to be sold or
removed, any of the ^{Property} ~~Goods~~ or Crops
mentioned in the bill, until the
further order of the Court.

To the Clerk of ~~the~~ E. B. Darnell Judge.
The Circuit Court }
for the County of }
Southampton. } 3

Bradshaw

v } Inyon bond

Gardner

Know all men by these Presents, That we Eli
Bradshaw and T. J. Pittlow, are held and firmly
bound unto E. J. Gardner, in the sum of One hundred
Twenty Nine 90/100 dollars to the payment whereof we and
truly to be made we bind ourselves our heirs Executors
and administrators jointly and severally firmly by
these presents, and we the Obligors hereby waive the
benefit of our homestead exemption as to this
obligation, sealed with our seals and dated this
day of December 1881. The condition of the above
obligation is such, that whereas the above Eli
Bradshaw, has obtained from the Judge of the
County of Southampton an Injunction to enjoin
restrain and prohibit the Defendants Gardner and
William H. Pittman Constable from selling removing
or permitting to be sold or removed any of the property
mentioned in the plaintiffs bill until the further order
of the Court, all further proceedings and a judgment
of J. W. Williams a Justice of the Peace for Southampton
County, rendered in favor of E. J. Gardner against
the said Bradshaw, for Fifty Seven dollars and
seventy one cents (\$57.71) with Interest thereon from
the 12th day of November 1881 till paid and Three
dollars & Fifty cents (\$3.50) costs. Now if the said Eli
Bradshaw shall well and truly pay and satisfy the
Judgment aforesaid, and also pay such costs as
shall be awarded against him, and all such
damages as shall be incurred by him in case the
injunction aforesaid shall be dissolved, then the
above obligation to be void, and the remain in
full force and virtue. Eli Bradshaw (Seal)
T. J. Pittlow (Seal)

Copy Judgment
& Execution

Exhibit (B)

Bradshaw

v

Gardner

Gouthampton County, to wit:

To W. H. Pittman, Constable of Said County:

I HEREBY COMMAND YOU TO SUMMON Eli Bradshaw

if to be found in your district, to appear at

on the 22 day of October, 1881, before me or such other Justice of the said County

as may be then there to try this warrant, to answer the complaint of E. J. Gordon

upon a claim for money for the sum of

Eighty one dollars and 80 cents,
due by Said Bradshaw; and then and there make return of this warrant.

Given under my hand this 15 day of October, 1881.

J. P.

J. W. Williams
12th day of November, 1881
JUDGMENT.—That the Plaintiff recover of the Defendant

dollars and Seventy one cents, with interest from the 12th day of November, 1881, till paid,
and Three 50 Cts. for his costs.

J. W. Williams J. P.
12th day of November, 1881

Judgment having been rendered in this case for

dollars and Seventy one cents, exclusive of interest and costs, and the defendant having requested stay of execution upon the
said judgement, whereupon

said

undertook as the surety of the

stayed thereon for

days from the date.

J. P.

Gouthampton COUNTY, to wit:

To W. H. Pittman, Constable of Said County:

I COMMAND YOU, in the name of the Commonwealth of Virginia, that of the goods and chattels
of Eli Bradshaw

sum of Fifty seven dollars and 71 cents, with interest thereon from the 12th

day of November, 1881, till paid, which

has recovered before

E. J. Gordon
in a warrant in debt; and also the sum of

3 50 cents, which were adjudged to said

for costs in prosecuting his said warrant.

Given under my hand this 12 day of November, 1881.

J. P.

A Copy.

J. W. Williams J. P.

Bradshaw
No. 2 Deposition
Gardner

1882 April 14th
Handed in & filed
by C. W. Seabell

1

The deposition of E. J. Gardner taken by
consent at the office of Wm B. Chanas in
the Town of Samoset on the 14th of April
1882 in the presence of Wm B. Chanas
counsel for E. J. Gardner and W. H. Parker
counsel for Eli Bradshaw - A be read as
evidence in behalf of E. J. Gardner in a
certain suit in chancery now pending
in the circuit court of Southampton
wherein Eli Bradshaw is plaintiff
and E. J. Gardner defendant

E. J. Gardner having been first duly
sworn on the Holy Evangelists of Almighty
God deposes and says as follows:

Mr. Eli Bradshaw was my tenant for sev-
eral years, and came to me to get
me ^{to} buy a horse to cultivate my land.
It was on Coit's day, that he came to me,
and I was busy, but told him to look
about and find one to suit him, and I would
pay for it. He found a horse belonging to
Mr. Jas. E. Cobb, for which he asked \$70.⁰⁰,
I refused to pay Mr. Cobb \$70.⁰⁰ for the horse
but offered him \$65.⁰⁰. I paid him \$40.⁰⁰
cash, and promised to pay him the other
\$25.⁰⁰ if he suited Mr. Bradshaw and myself.
Mr. Bradshaw was to try him. After trying

him, I sent the balance of the money, \$25, by Mr. Bradshaw to Mr. Cobb. The understanding between us all three was that Mr. Bradshaw was to have no title to the horse until he paid me for him.

Question by Defendant's Counsel. ^{Was not} The horse ~~was~~ placed upon your farm, and did he not remain there until he was levied on by Constable on your order?

Answer. Yes sir, he remained there till he was levied on.

Question by same. Has Mr. Bradshaw ever paid you the purchase money of said horse? A. No sir, not all, but he has paid me a small portion of it, about \$15.⁰⁰ as well as I recollect.

Question by Plaintiff's Counsel. When the forty dollars (\$40.⁰⁰) was paid, to whom, by whom, and where was it paid?

Answer. I paid it to Mr. Jas. E. Cobb in my store.

Question by same. Who was present when you made this payment?

Answer. There were several present, being Court day, but I recollect only Mr. Cobb and Mr. Bradshaw,

Question by Plaintiffs Counsel, Did you take a note from Mr. Bradshaw retaining title to this horse?

Answer, I did not.

Question by Plaintiffs Counsel, Did you not charge Mr. Bradshaw on his general account with the purchase price of this horse?

Answer, No sir, I did not. I considered him my horse.

I further depose that said note
 is of Gardner

The above deposition of E. J. Gardner was taken at the time and place mentioned in caption, before me J. N. Sebell, a Commissioner in Chancery for the Circuit Court of Southampton County, in the presence of Geo. Wm. B. Shands Counsel for Defendant and W. H. Parker Esq. Counsel for Plaintiff,

Given under my hand as Commissioner aforesaid this 14th day April 1882.

J. N. Sebell
 Commissioner in Chancery

Accepted
 Geo. Wm. B. Shands

Deposition of James E Cobb Taken pursuant to
The notice hereto annexed and duly given at
the Town of Franklin Southampton County
Virginia on the 31st of March 1882 between
the hours of 10 o'clock A. M. and sunset
to be made as evidence in behalf of Eyrer
& Gardner in a certain suit in chancery
now pending in the Circuit Court of
Southampton in the case of Bradshaw vs Gardner

James E Cobb having been first duly sworn on
The Holy Evangelists of Almighty God deposes
and says as follows

Dear Court day 1879 at Jerusalem
Eli Bradshaw came to me and I
asked him if he did not want to
buy a horse and he said he did
but had to see another man ^{to get} for
the money I then went with him
to Mr Gardner. well Gardner asked
me about the horse I told him
he was coming he then furnished
~~Gardner~~ for Bradshaw forty
dollars I did not see Gardner give
~~me~~ the money to Eli Bradshaw
but he E Bradshaw told me
he did give it to him Mr Gardner
would not pay me all the money

at that time because he said he wanted to see if the horse turned out to be sound. The balance of the money was paid some after by Eli Bradshaw. It was an iron gray horse.

Question by the plaintiff's counsel

You went with Mr Bradshaw to Mr Gardiner's.

Answer Yes

Question by the same. While there did Mr Gardiner inform you whether or not he retained any title to that horse or not.

Answer No he did not.

Question Did he say anything to make you believe he owned the horse to Mr Bradshaw.

Answer No he did not he told me he was going to let him have the money.

Question Did you consider ~~yourself~~ you were selling the horse to Mr Bradshaw or Mr Gardiner.

Answer I cannot say but Mr Bradshaw paid me the

but the first payment of forty dollars Mr Bradshaw told me got from Mr Gardiner. The other other money ^{which} he paid he said I have come to bring you the balance of the money and wanted a receipt. And I gave a receipt to Eli Bradshaw and delivered the horse to him.

Question by defendant's counsel did not Mr Bradshaw tell you he was living on Gardiner's land.

Answer No he did not. And further this deponent says not.

James H. Little

The above deposition was taken at the above and entered before me at the time and place mentioned in the caption.

Wm. H. Little

Commissioner in Chancery.

Ly on Iner



Bradshaw

(Depositions)

1882 Cir. Ct.

Handed in by M-H Parker
March 31st 1882 L.R. 6

I acknowledge service of the within notice.
Wm. H. Parker, atty,
for Eli Bradshaw.

Feb 29th 1882.

Bradshaw
vs
M
Take deposition
Parker

To Eli Bradham.

You are hereby notified that I shall on Friday the 31st of March 1882 in the Town of Franklin between the hours of 10 O. Clock A. M. and sunset proceed to take the depositions of James E Cobb and others to be read as evidence in my behalf in a certain suit in chancery now pending in the Circuit Court of Southampton in which you are plaintiff and I am defendant

E. J. Gardner by
Shanes his attorney

Gardner

ads 3

Bradshaw

Autism of E. S. Gardner

1
The answer of E. J. Jordan to a bill in
chancery filed by Eli Bradshaw before
Judge Barnitt of the county Court of Southampton
against him and made returnable to the circuit
Court.

This defendant for answer to the said
bill or as much thereof as he is advised
it is material for him to answer
answering says that all the facts about
the obtaining a judgment, levying an
execution ~~on~~ the good of Eli Bradshaw
and giving an indemnifying bond to
the constables are true and he gives
the following reasons for his conduct
and action in the premises which
will show to the court that he acts
in a lawful manner to recover a
debt which the said Eli Bradshaw
was lawfully to defraud him of by
making a fraudulent homestead deed.

This defendant states that in the
year 1879 and up to the 31st of December
1881 Eli Bradshaw was a tenant of
his and engaged in working his land
on an agreed rent. That in the year
1879 Eli Bradshaw represented to
him that in order to make a crop

he needed another horse and that he purchased the horse on which the constable levied from James E. Cobb of Franklin and the said horse was placed on the farm in possession of his tenant Eli Bradshaw and so remained until he claimed the homestead in him. This defendant says that he made the bargain for the purchase of the horse and sent the money by Eli Bradshaw to pay Jas E Cobb and the receipt filed shows that he paid Jas E Cobb sixty five dollars and this defendant charges and avers that the purchase of the horse was made by Eli Bradshaw for him and that the said Bradshaw ^{he was} was to have no title to him until paid for and that the said Eli Bradshaw still owes him the most of the purchase money for the said horse.

This defendant is advised that no claim for homestead can be set up in property until it is paid for and that any such homestead claim is fraudulent and void as to the vendor or former owner or party holding title to the property. And that when a household

or head of a family executes a homestead deed as a part and in furtherance of a design to hinder, delay and defraud his creditors in the recovery of their just debts such deed will be vitiated and invalidated by such conduct.

Therefore this defendant asks that this injunction may be dissolved and the plaintiffs' bill dismissed at his cost and that this defendant may be permitted to make his debt out of Eli Bradshaw or his security in the injunction bond should Bradshaw prove to be insolvent and having fully answered this defendant prays to be dismissed with his costs in

Shanley & Co

signed

Eli Gardner

Southampton County to wit

This day E. D. Gardner personally appeared before me and made oath that the facts set forth in the above answer are true to the best of his knowledge and belief given under my hand this 1st day of February 1882

J. R. Tyler,
Clerk in Charge

Bradshaw

no 

Oreca

Gardner

May Term 1882

To be entered.

Geo. Brown



Bradshaw

vs

3

Decree.

Gardner

This day this cause came on to be heard on the Complainant's bill, depositions of witnesses, exhibits filed and was argued by Counsel. On consideration whereof, the Court being of opinion that the horse in the proceedings mentioned is the property of Eli Bradshaw, doth adjudge, order and decree that the injunction heretofore sued out be ~~perpetuated~~ ^{perpetuated} that the said E. J. Gardner take nothing by ^{so far as the said horse} his suit and that ^{the fifteen hundred pounds seed cotton} this cause be removed from the docket at the costs of the Gardner. But the said E. J. Gardner shall not be barred from the assertion of his rights against any party hereafter acquired by the said Eli Bradshaw.

The Commonwealth of Virginia,

To the Sheriff of Southampton County - GREETING:

WE COMMAND YOU TO SUMMON

Constable

Ezra Gardner

Wm H Pittman

to appear at the Clerks Office of our Circuit Court of Southampton County
at the Rules to be holden for the said Court on the first Monday in January
next to answer a bill in chancery exhibited against them in our
said Court by *Eli Bradshaw* & this they shall in no wise omit
under the penalty of the Law

and have then there this writ.

Witness, **LITTLETON R. EDWARDS**, Clerk of our said Court at the Court
House, this 7 day of December 1881, in the 106 year
of the Commonwealth.

L R Edwards cc

Virginia:

Southampton County to wit:

I, Wm. Parker, a Commissioner in Chancery of the Circuit Court of the County of Southampton in the State of Virginia, do hereby certify that M. W. Turner personally appeared before me in the County & State aforesaid, and made oath that on the 7th Dec. 1881, he delivered a copy of the within document to the within named E. J. Gardner & Henry Pittman, Constables, they being white male persons not 16 years of age and gave them information of its contents.

Given under my hand Dec. 7/81.

Wm. Parker,
Commissioner in Chy.

1882 January Rules

Gardner & Pittman

E. J. Gardner & Henry Pittman

Bradshaw

Wm. H. Parker p. 9.

John S. Edwards & Co

do inform and forbid the Defendant Gardner & Pittman from putting, removing or permitting to be taken or removed any of the property mentioned in the plaintiffs bill until the further order of the Court the penalty of \$126.90/100 dollars with good security in the penalty of \$126.90/100 dollars conditioned according to law

Paid to E. Bradshaw Sixty five
Dollars in cash for Arrears
Franklin Va
at Dec 19/89 R. M. G. Cobb

Cobb

Copy Receipt
to

Bradshaw

(Exhibit A.)

Bradshaw

2 }
1 }

Gardner & Co

Recd of E. Bradshaw Sixty five dollars
in case for Horse-

Franklin Va

James E. Leobb

Dec. 19. 1879.

Recd of E Brackshaw Sixty five dollars
in cash for Horse.

Franklin Va

Dec 19. 1879

James E Cobb

A copy sent L R Edwards etc

Ely Bradshaw
Acct. within

E. J. Gardner

Exhibit
(A)

Bradshaw

&

Gardner

1879 Eley Bradshaw
To. E. J. Gardner Dr

Dec. 15	1 Horse	65.00
1880 Feb 14	Cr by Cash \$15.00	
Nov 3	" " " 15.00	30 00
" "	Bal due on horse	35.00
Mar 10	Orylin Shells	3.75
May 14	1 lb Coffee	20
" "	1 " Sugar	13
" "	Box Ep. Coffee	05
" "	Tobacco	05
" 24	1 lb Coffee	20
June 10	2 cys Pepper	05
" 14	1 Box Snuff	13
" 24	1 plug Tobacco	10
" "	1 lb Sugar	13
July 13	1 " Coffee	20
" "	1 Box snuff	12
" "	1 Box eye	13
" "	1 Box Ep. Coffee	05
" "	1 plug Tobacco	10
" 23	1 " " "	10
" 28	1 Box snuff	10
" "	1 plug Tobacco	10
" "	1 Box Ep. coffee	05
Aug. 6	1 Box snuff	13
" 19	1 " " "	13
" "	Tobacco	05
" 25	1 lb. Sugar	13
Sept 2	Coffee	10
" 6	1 Box Soap	10
" "	1 Box Ep. Coffee	05
" "	Tobacco	10
" "	1 Box snuff	13
" 11	1 plug Tobacco	10
" 15	" " " "	10
" 24	1 Box snuff	12
" 28	1 Box eye	13
" "	1 plug Tobacco	10

42.21

Enter Error in acct.

50

Ampt. allowed by justice on final acct.

41.71

16.00

57.71

Ampt. Charged for salar to

Reside in June \$49.00

A. Copy. J. W. Williams & P.

121

Bradshaw

or } Hist. Rules

Gardner Jr

In Southampton Circuit Court.

Eli Bradshaw

Plaintiff

against

E. J. Gardner & Wm. H. Pittman Defendants

1881 Dec. 7th Bill of filed bond of given & Injon to
issued

1882 Jan. Rules - Injon of returned executed. Decree nisi to
Sept

" Feby. " Bill taken for confessed & cause set for hearing &c.

" March 31st Deposition filed

" April 14 " "

" May. Injon ~~discontinued~~ ~~bill dismissed~~ perpetuated &c.