

1883 ~ 03

Southampton County Chancery -

Claud, John P. vs Gardner, E. J.

injunction - then remove fence -

To the Hon. C. C. Barritt, Judge of the
County Court of Southampton County.

Humbly complaining, sheweth
unto your Honor, your complainant
that, E. J. Gardner, a resident of the
town or village of Jerusalem, in the
County of Southampton, is seized and poss-
essed of a certain lot of land, situated
in said town or village, in said County,
and bounded as follows: On the South by
the Court-house square, West by the Not-
toway River, North by the lot known as
the Old Drungoole Hotel lot, now held
and occupied by John P. Leland, and East
and North by the street of Jerusalem and
road leading from Jerusalem to Peters-
burg, The said street and road separa-
ting the said E. J. Gardner's lot from the
Hotel owned by James R. West, dec'd, as
will more fully appear from an extract
taken from the papers of a suit insti-
tuted by the said E. J. Gardner against
John P. Leland in the Circuit Court of
Southampton County, herewith ^{filed} as an
exhibit in this cause; That your Com-
plainant is also a resident of the town or
village of Jerusalem, in the County of

Southampton, and is seized and possessed of a certain lot of land, situated in said Town or village, in said County, adjoining the lot of C. J. Gardner and facing the Street of Jerusalem and road leading from Jerusalem to Petersburg, and separating the said C. J. Gardner's lot from the Hotel of James R. Shep, dec'd. That the said C. J. Gardner has erected, or partially erected a fence or paling in front of his residence opposite to the Hotel lot of James R. Shep, dec'd, several feet, on a parallel line with the street of Jerusalem and road leading from Jerusalem to Petersburg, and extending within a few feet of the residence of your Complainant, That the residence of your Complainant has, by recent improvements, been greatly enhanced in value, and is occupied and used both as a place of business and private residence; That ^{the} erection or partial erection of the fence or paling aforesaid will necessarily throw those passing to and from the place of business and private residence of your Complainant almost into the public street or road, thereby creating great inconvenience and loss both to your Complainant and his

Customers; That the erection or partial ^{erecting} of the fence or paling aforesaid will, more-over, obstruct and darken the view to the property of your Complainant, and that, its value and comfort and enjoyment will be very materially and visibly diminished; That ~~your~~ the said E. J. Gardner is estopped from denying the boundaries established in the afore-mentioned suit, instituted in the Circuit Court of Southampton County, by the said E. J. Gardner against the said John P.eland, but that, he is bound by them. That the said E. J. Gardner has no right to convert, voluntarily, without any authority of law, to his own exclusive use and enjoyment, the public domain and property; That any such conversion is plainly an infringement on the rights and privileges of the public and calls for immediate redress.

That your Complainant is advised that, it is a principle of law, established and acted upon for ages, that no one shall use or enjoy property to the injury, hurt, inconvenience or discomfiture of another; That the erection or partial erection ^{of the said fence or paling}, will, necessarily and unavoidably, result in

a multiplicity of suits and the stirring up of litigation, which is repugnant to the Common Law and contrary to equity and justice; That your Complainant desiring to avoid any litigation in the premises, applied to the said E. J. Gardner not to erect said fence or paling, but that the said E. J. Gardner not heeding your Complainant's request, has erected or partially erected the same; That the erection or partial erection of the fence or paling aforesaid is a nuisance, and will work injury, hurt, inconvenience and discomfiture to the property of your Complainant, and should, by reason thereof, he is advised, be abated and removed.

In Tender Consideration Whereof, and in as much as your Complainant is remediless, save in a Court of equity where such matters are peculiarly cognizable, To the end, therefore, that justice may be done, your Complainant prays that, the said E. J. Gardner be made defendant to this bill, and required to answer its allegations on oath. That an Injunction may be granted requiring, immediate abate-

ment and removal of the nuisance
in the bill complained of; and that
Honor will grant such other, general and
special relief as to equity may seem
meet and the nature the case require.

And as in duty bound your com-
plainant will ever pray, &c.

May it please the Court, &c.

J. P. Cland

State of Virginia:

County of Southampton, to-wit:

This 30th day of July 1883, John P. Cland
personally appeared before me a Commissioner
or in Chancery of the County Court for the
said County of Southampton, and made
oath that the allegations contained in the
fore-going Bill are true.

Given under my hand this 30th
day of July 1883.

W. J. Sebrall

Comm: in Chancery
"

In Vacation

July 31st 1883

Injunction Refused

Geo. B. Reed

Clauud

vs & Decree
Gardner

Clauud

vs $\frac{3}{8}$ Bill & c.,
Gardner

Blaine
Gardner
See vacation July 30th 1883
This day the plaintiffs presented
their bill asking for an injunction
as prayed for in the within bill
and the injunction asked for against
The defendant C. L. Gardner was
refused

Ed. H. Parrett
Clerk Co. Court

Oland,
vs 3 Notice
Gardner

To E. J. Gardner, Esq.,

Take notice that, I shall on Monday, July the 30th 1883, apply to the Judge of the County Court of Southampton County, to enjoin and restrain you from erecting a fence or paling in front of your residence opposite to the Hotel of James R. West, dec'd, about eight or ten feet, on a parallel line with the street of Jerusalem and road leading from Jerusalem to Petersburg, and extending within a few feet of my residence. The application will be made to the Judge in vacation at the town of Jerusalem.

Given under my hand This 25th day of July, 1883.

J. P. C. Lane (Sign)

Cland. ¹⁷³injunctio
Gardner

Memorandum
for E. Gardner

Cland
No 3 injunctive
Gardner

See Judge Blow and
Keefer whether clerk of county or
circuit court must give execution
for costs

Mr Pinner no tax costs in this
case in the circuit court

Geo Blow

Clarus
or 3 Exhibit
Gardner

In Southampton Circuit Court. Apl: Rules
1880.

E. J. Gardner plaintiff complains of Mrs. P. Blaud deft: who has been duly notified for this writ: that heretofore writ: on the 10th day of Jan'y: 1880. the said plff was possessed of an Estate in fee simple absolute of a certain tract or lot of land lying in the town of Jerusalem and being in the County of Southampton containing one acre of land, bounded on the South by the Court house square - West by Mattawamy River, North by the lot known as the old Dringjosh Hotel lot now held and occupied by Mrs. P. Blaud, and East and North by the Street of Jerusalem and road leading from Jerusalem to Petersburg, the said street and road separating the said E. J. Gardner lot from the Hotel owned by James R. West. decd.

Extract from Declaration filed in the Circuit Court of Southampton by E. J. Gardner. Plff vs Mrs. P. Blaud deft.

A. copy.

J. B. Bruce C. C.

Affidavit of
Witnesses

We the undersigned citizens of the
County of Southampton do state & aver
that, in our opinion, the paling or
fence of E. J. Gardner referred to in the
Injunction Bill in case of Cland vs.
Gardner will obstruct and darken
the view to the property of Geo. P. Cland
and will, therefore, materially injure and
diminish the value of the same; and
we further state & aver that the said
paling or fence is upon the Public
Street or highway —

Given under our hands this 30th July 1883.

J. T. Lankford
Chas. W. Turner,
L. P. Eley

State of Virginia,
County of Southampton, to-wit: —
Subscribed and sworn to before me this
30th day of July 1883.

W. G. Sebrill,
Com'r. in Chancery.