

1895-17

Santhampton County Chancery

Vick, E. G. vs

Harriet, Iron, et al

"Injunction"
Restrain from cutting
or removing timber

Beale, Benja.
Stewart, Iron.

Vick O.R.
vs. Bill & Exhibits
Harris & others

McLennan p. 2.

To

The Honorable C. W. Heile Judge of the
Circuit Court for Southampton County

Your Complainant E. P. Vick complain-
ing sheweth unto the Court, that he seized
in fee of a tract of land located near Branch-
ville Va. containing 330 acres upon which
there is situated a water grist mill. that he
purchased the said property from George E.
Beaton and Virginia O. Beaton his wife by
deed of February 26th 1885 which deed is
duly recorded in the Clerk's Office of this
County and is filed herewith as Exhibit
"X" and asked to be made a part of this
bill. that the said tract, which is commonly
known as the "mill tract" is bounded by the
lands of Wm. Harris and others. and has
upon it some valuable cypress and pine
timber. ^{that said tract of land comprehends the land and water constituting the said mill pond & high water mark} that being so seized and possessed
the aforesaid Wm. Harris on or about the
16th day of March 1892. entered upon the
said tract of land and with the aid of ^{James Beale & son} wood-
choppers. and lumbermen began, and is still
cutting your complainant's timber trees and
removing them from his land to the Seaboard
& Roanoke Railroad and other places for sale.

Your Complainant further saith, that
he has kindly and peaceably informed the said
Wm. Harris that the trees which he had cut and

and is still continuing to cut or have cut, were
grown on your complainant's land and in his
mill pond which was purchased from the
said George E. Beaton wife; but his notification
and objection as made to the said Harris, and
his desire as expressed to him that he would
desist further commission of the waste as com-
plained of herein have been heeded;

Your complainant alleges further, that not
only has his valuable timber been cut and
removed, but that the trash and limbs from
the tops of the trees thus felled are likely
to float down his pond, and materially effect
the operation of his mill in grinding corn into
meal.

In tender consideration whereof and
forasmuch as your Complainant is without
an adequate remedy at law, and only entitled
to complete relief in a Court of Equity where causes
of this nature are properly cognizable to the
end therefore that justice may be done, he
prays that Wm. Harris, Beja. Beal, & Wm. Stewart

be made parties defendant to
this bill and required to answer the allegations
contained herein. That an Injunction may
be granted restraining the aforesaid defen-
dants their agents employers and all other persons
from cutting or removing the timber trees of

your complainant situated within the boundaries of the said mill pond or any where else on the said mill tract. and that such further general or special relief may be granted to your complainant as the nature of his case may require or to equity may seem meet. And
Your complainant will ever pray
(sign) - E. R. Tick

Jan. L. McKinnon J. J.

State of Virginia

County of Southampton to wit

I Wm. M. Beaton a Justice of the peace in and for the County aforesaid in the State of Virginia do certify that E. R. Tick the Complainant in the above bill and case name is signed to the same appeared in person before and made oath that the statements as contained in the said Bill of complaint, so far as made of his own knowledge are true, and so far as made from information derived from others he believes to be true.

Given under my hand this the 24th day of March 1892
Wm. Beaton J. P.

The amended answer of Wm Harris to a Bill in chancery in the circuit Court of Southampton filed by E. R. Vick against him and others

This defendant by this his amended answer filed by leave of the court answering says that he denies all the allegations of the plaintiffs ^{bill} that he has not cut nor is he cutting any timber or timbers on the plaintiffs land, that he is not obstructing nor has he obstructed in any way the flow of water to the plaintiffs ^{mill}, and that he and the hands he employs only cut timber on his own land fully a mile and a half from the plaintiffs mill and dam and says that as far from disturbing the plaintiffs in any of his ^{rights} that the plaintiffs has sought and is now seeking to deprive him of the use of his landed estate, and having fully answered further prayers to be discharged with his costs &c

William Harris

Shanda to Son J. A.
Southampton County to wit

This day William Harris personally appeared before me a justice of the peace for this county, appeared

and made oath that the facts set forth
in the above account are true to the best
of his knowledge and belief given under
my hand this 1st day of November 1892

Wm. Beaton J. P.

Garriss v. ab

As to Amended Account

of Wm. Garriss

Wick

See 87 to 432

Brief for defendant
Harris

Bick

vs 3

Harris

Notes by defendant
Harris

Mills on current Domain

The fee in the land remains with
the owner subject only to the Easement

Page 485 -

citing Jordan vs Woodward 40 Me 317

~~Parker vs New Boston Mill Dam~~

Newman

101 Map

Hunter vs Matthews 1 Rst Ca

458

Where answer denies all the
allegations of the bill set up in equity
and those grounds are not sustained
by proof the injunction must
necessarily be dissolved

Motley vs Frank 87 Va 432

Hogan vs Dake 20 Gratt 244

Moon vs Stuhman 80 2d 331

Code of 1887 section 13.54 and

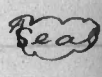
authorities there cited

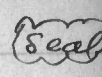
Shaw vs Son
for defendants

This Deed made this 26th day of Feby. 1885
between Geo. E. Beaton & Virginia C. Beaton his
wife of the County of Southampton State of Vir-
ginia, parties of the first part & Elias R. Vick
of the said County & State of the second part
Witness: that in consideration of the sum
of Two thousand Seven hundred dollars, in
hand paid, the receipt of which is hereby ac-
knowledge, the said Geo. E. Beaton & Virginia
C. Beaton his wife, do grant unto the said
Elias R. Vick with general warranty, all of
the tract of land known as the Mill tract
with the said Mill pond, grist mill & fixtures
attached, bounded as follows, on the North
by the land of the said Elias R. Vick, on
the East by the lands of Jno L. Sykes, Wil-
liam S. Francis & others & Littleton G. Powell,
on the South by the lands of Augustus
Smith's Est. & on the West by the lands of
Lawson Beale, containing, Three hundred &
thirty acres more or less. The said George E.
Beaton, covenants that he has the right
to convey the said land to the grantee that
he has done no act to encumber the said
land, that the grantee shall have quiet
possession of the said land free from all
encumbrances, and that they the said par-
ties of the first part will execute such further
assurances of the said land as may be

requisite.

Witness the following Signatures & Seals -

George E. Beaton 

Virginia O. Beaton 

Southampton County, State of Virginia, To wit:
I, W. P. Sebrell, a Notary Public for the
County of Southampton, State of Virginia, do
certify that George E. Beaton whose name is
signed to the writing above, bearing date on
the 26th day of Feby 1885 has acknowledged
the same before me in my County afore-
said, & I further certify that Virginia O. Bea-
ton the wife of the said George E. Beaton whose
names are signed to the writing above bearing
date on the 26th day of Feby. 1885 personally
appeared before me in my County aforesaid
& being examined by me privately & apart from
her said husband & having said writing
fully explained to her, she the said Virginia
O. Beaton acknowledged the same to be her
act, and declared that she had willingly
executed the same & does not wish to
retract it.

Given under my hand this 26th day of Feby
1885

W. P. Sebrell N.P.

Southampton County: In the Clerk's Office March
3^d 1881.

This Deed of Bargain & Sale from Geo. E. Beaton
et ux to E. R. Vick, was this day received
& together with the certificate thereto annexed
admitted to record.

Teste J. B. Prince C. C.

A Copy

Teste B. J. McLenore C. C.

Pick
or 3
Barnis

note for defendant

The use of land flooded for mill purposes by the owners of the mill is not intended to include the use by the owner of the ~~mill~~ land when the same will not interfere with the proper operation of the mill. The mill act was to make a head of water to be raised and since the owner may make a boom on his own land by driving piles in the dam, although he thereby excludes the mill owner from making it a depository of lumber for his mills, the owner is entitled to the ice formed above his dam, to the use of water for his cattle, for irrigation or any reasonable purpose not interfering with the use of his mill. He cannot fill up the flats and thus diminish the capacity of the basin, he can use his land but not so as to interfere with the efficient use of the dam, but the free to the lands remains in the owner subject only to the easement.

Mills on eminent domain page 485 citing Jordan v Woodard 40 Me 317. Paine v Woods 104 Mass 160, Boston Mill dam v Newman 12 Pick 468, Spaulding v Matthews 15 Rob. 204 46 Mass 2 Robinson v Co 253

over

1 Munford 309, 2 Munford 534 Code of 1897
section 1354

Sham-d is son for
defendants

The answer is on oath the bill does not require
answer on oath therefore the answer is evidence
and the plaintiff is put to the proof in other
words the must have no evidence as can be
corroboration circumstances Sham-d is son

Bring to care
Wid by defen dnt's counsel
O. C. R.

Ans 3, the charge any

36 ans

Filed during term

The joint answer of William Harris, Benjamin Beale and William Stewart to a bill in chancery in the circuit court of Southampton by E. R. Vick vs them W. A. Powell, William Harris Benjamin Beale and William Stewart -

These defendants for answer to the said bill or as much thereof as they are advised it is material for them to answer, answering, say that Benjamin Beale and William Stewart were employed by William Harris and W. A. Powell to cut cypress trees and other timber on the lands of the said Harris and Powell and not on the lands of E. R. Vick, that they know nothing of the boundaries of the lands of the said Vick Harris and Powell and have no interest in the subject matter of the suit and since the service of the injunction have ceased work

And the defendant William Harris answering says that he owns a tract of land containing ^(1100 hundred & twenty five) 225 acres on the south side of the flat ^{swamp} which does not adjoin the Mill Pond farm of E. R. Vick, but that there are two farms on the south side of the flat swamp, to wit the Merryman farm and the Lawton Beale ^{farm} both of which are between this defendant's lands and the Vick Mill Pond Tract, that the place where he had hands cutting timber on

his own lands and the Mill house was
airtant ~~and~~ is one mile and a half, This ^{dependant} does
not know that E. R. Vick or any one for
him or any who has hitherto owned this
mill and site ~~are~~ had any proceedings
instituted in the courts of Southampton
to condemn or circumscribe any lands
for the erection of this mill he does not
know that any lands and especially his lands
have ever been condemned by any one
and damages assessed for injury by being
flooded by water, of this he calls for
and demands full proofs on the part of
E. R. Vick, The well established legal
principle being that one must recover on
the strength of his own title, He does
not subscribe to the principle laid down
by the plaintiff that the condemnation
of the mill site and one or two acres
adjoining gives a fee simple title to a tract
of land ^{and airtant} ~~extending~~ one mile and a half
from the ^{mill house} ~~site~~, Nor does he admit the principle
that if any of his lands has been condemned
by reason of its being flooded by water
that - gives to E. R. Vick the fee simple title
to his land one mile and a half from
the mill site, This dependant ^{he has} says ^{and}
contends for the right to cut this timber off
his own land and that if he does not

disturb E. R. Vick in the enjoyment of his
 water rights if he does nothing to increase
 or diminish the flow of water to ^{the} mill
 which he is not doing if ^{he} said down on
 drift to clog or impede the working of this
 mill which he is not doing the plaintiffs
 E. R. Vick is not injured and cannot
 complain, that E. R. Vick has the right not
 to be disturbed ⁱⁿ the flow of water over
 this land and that this defendant Mr
 Harris owns and can use the timber growing
 thereon, that E. R. Vick has a fee simple
 title only to one acre of land ^{acres} ~~acres~~
 for the mill dam, and the right to the
 uninterrupted flow and use of the water
 on the other condemned lands this
 defendants say he has done nothing or
 intend to do nothing to injure E. R. Vick
 in his water rights, that he is using
 his property ^{as} not to conflict with the
 rights of others and therefore he asks that
 the court would dissolve this injunction
 and disburse this bill at the plaintiffs
 costs

Shanda & Son Jr. & Co.

signed by

William Harris

Witness -

Wm. J. Powell

Joshua H. Brown

Bess Beale

Geo. E. Powell

William Stewart
mark

State of Virginia
Southampton County, Texas

Page 12
This day Wm Harris, Benjamin Beale and William Stewart personally appeared before me a justice of the peace for the state and county aforesaid in my county aforesaid and made oath that the facts set forth in the above answer are true to the best of their knowledge and belief given under my hand this 26th day of April in the year 1892

(Wm Beaton

J. P.

Note

Harris & co.

Answer of Wm Harris
" " Bay Beale
" " Wm Stewart.

1892 May 5. filed.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—Greeting:

WE COMMAND YOU TO SUMMON

*Wm Harris, Benj^a Beale and
Wm Stewart*

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 *April* next, to answer a Bill in Chancery
exhibited against *them* in our said Court by *E. R. Vick*

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

WITNESS, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this *28* day of
March, 189*2* in the 11*6*th year of the Commonwealth.

Teste: B. F. McLemore C. C.

Vick.

Harris & others

On motion of the Plaintiff an injunction is granted in accordance with the prayer of the bill, enjoining and restraining Wm. Harris, Benj^d. Beale & Wm Stewart their Agents sub Contractors, employees and all other persons, from cutting or removing the timbered trees now standing or recently felled by the defendants or their employees on the Mill tract or any where upon the Mill pond of the said E. R. Vick as comprehended within the land covered with back water at high water by reason of the dam across said mill pond. But before the complainant shall have the benefit of this order, he or some one for him shall enter into bond before the Clerk of the Circuit Court of Southampton County in the penalty of \$5000.- conditioned as the law directs, with security to be approved by the said Clerk.

Attest. Teste: B. F. McLeander C. J.

I certify that bond required by the foregoing order has been given with approved security.

B. F. McLeander C. J.

Vick

Serv:

Harris & alv:

1892. 1 April Rules

Per: Ct:

Executed April 2. 1892,
by delivering a copy of this
Order and injunction
order to each of the within
named parties.

J. H. Williams
Suff.

West Side

Veck
~ ~ ~ ~ ~
Injection Order

Harris & Co.

Entered

Page 521.

Injunction Order

Vick E. R.

against ^{them} In Vacation Decees
Wm. Harris & others

On motion of the plaintiff an Injunction is granted in accordance with the prayer of the bill enjoining and restraining Wm. Harris, Prueja Beale & Wm. Stewart their agents sub-contractors employees and all other persons from from cutting or removing the timber trees ~~now~~ standing or recently felled by the defendants or their employees, on the mill tract or any where upon the mill pond of the said E. R. Vick as comprehended within the land covered with back-water at high water by reason of the dam across said mill ponds.

But before the complainant shall have the benefit of this order he or some one for him shall enter into bond before the clerk of the Circuit Court of Southampton County in the penalty of \$ 500, — conditioned as the law directs, with security to be approved by the said Clerk.

C. W. H. Lee

March 25th 1892

Wick vs. Harris v.als

As to burden of proving that injunctive
tort should be dissolved see High
on Injunctions Sec. 881.

That the answer should deny
all the material allegations in
the bill directly & with clearness
and certainty. see High on Injunctions
see 882 + 883 also see 886.

Bill sets up title, under oath
& by proof as evidenced by exhibits,
with no denial of title on the part
of defendant

E. R. Vick

~~Plff~~

against

In Chancery

Wm Harris. Benja Beale.

and Wm Stewart

Def.

1892 Mch 28. Process issued to 1st April Rules.

" 1st April Rules: Process executed. Bill & Ex: ^{with injunction or otherwise. Bill lodged in Office.}

filed. decree nisi

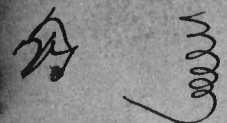
" 2 "

"

Bill taken for Confessed

& Cause set for hearing.

Veck

 Disjunction Band

Harris & Co

1892. March 28 feet.



Know all men by these Presents, That we *E. R. Vick. and A. H. Hines*

Hines

Wm Harris. Benj. Beale & Wm Stewart.
are held and firmly bound unto ~~the Commonwealth of Virginia~~ in the just and full sum of

Five hundred Dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. And we, the obligors herein, hereby waive the benefit of our homestead exemption as to this obligation, and also waive any claim, right or privilege to discharge any liability arising under said bond in any currency, funds, counter-claims or offsets other than legal tender currency of the United States.

Sealed with our seals and dated this *28th* day of *March* A. D. 18 *92*

THE CONDITION of the above obligation is such that if the above bound *E. R. Vick*, who has sued out before *C. H. Hill*, Judge of the Circuit Court of Southampton County, in Va. a *restraining* and *injoining* *Wm. Harris. Benj. Beale & Wm Stewart.* their Agents, Sub-Contractors, employees and all other persons from cutting or removing the timber trees now standing or recently felled by the Defendants, or their employees, on the mill tract or any where upon the mill land of the said *E. R. Vick*, as comprehended within the land covered with back-water, at high water, by reason of the dam across said mill land. Shall pay all costs and damages which may be sustained by any parties in case this injunction shall be dissolved,

~~shall faithfully discharge the duties of~~
or else to remain in full force and virtue.

~~office or trust~~ according to law, then the above obligation to be void,

Signed, sealed and delivered }
in presence of the Court. }

E. R. Vick 
A. H. Hines 

SES—Continued.

No miles beyond ten traveled coming to court.	No miles beyond ten traveled returning from court.	Total No. of miles for which compensation is made.	Ferryage paid.	Tolls paid.

Vick

to 3 Deans

Baris 10 sh

To be entered

C 975

Mr 11.1892

Entered

~~Write~~

on 3

Decem

Blairis

On motion of
William Blairis leave is granted
him to file an amended answer

Wick

on 3 Dec 1892

Gann's 4als

To be entered

C 700

Nov 18.92

Vick.

vs. Dever

Boaris

On motion of the defendant
William Boaris leave is granted him to
file an amended answer and the same
is accordingly filed and by consent of
parties given in open court and then
entered of record this cause is made a
vacation ~~order~~ cause

Vicco & Harris - Stat Cash.
to May Term 1893.

50-1.00. 28-18. 100. 15. 15. 35. 50. 75. 15.

2.88. 40-25. 25-58. 25. = 89.62

Bill 89.62

Shff 2.00

Lawy. 16.50.

284 1/2

Wick
as 3 Deane
Glanis 10 als

To be entered
CMT

May 11. 1893

Entered

Yll caused to
be deposited
J. M. Lewin p. 4.
J. M. Lewin

Vick

vs 3

Deane

Harris & als

This day this cause came on to be heard on the plaintiffs bill the answer of the defendants Thence the amended answer of William Harris Thence the replication the said answer exhibits files and was argued by counsel On Consideration whereof the court doth adjudge, order and decree that the ~~plaintiffs bill~~ ^{by petition or dissolution} be dismissed and that the defendants recover from him their costs about this suit in this behalf expended

Nick
r. Diane
Harris et al

1895 Sept. 20,
To be entered.

~~Robert J. Hanks~~

Nick

v.

Deane

Harris et al.

This day this cause came
on again to be heard upon the papers
formerly read and was argued by counsel.
On consideration & it appearing that
nothing further remains to be done herein
it is ordered that the same be removed
from the docket.