

4274
MARY M. COSTON, JOHN J.
SMITH, and OLA MAE SMITH,
COMPLAINANTS

VS.

JAMES H. DENNEY,
RESPONDENT

IN THE LAW AND EQUITY COURT
OF SHELBY COUNTY, ALABAMA
EQUITY CASE NO. 1522

FINAL DECREE

This cause coming on to be heard was submitted to the Court for final decree upon the Bill of Complaint, Decree Pro Confesso against the Respondent, James H. Denney, and upon the other pleadings and testimony filed in this cause, and upon the several exhibits offered into evidence in connection therewith, as noted by the Register, and the Court, having considered and understood the same, is of the opinion that the Complainants are entitled to the relief prayed for, the Court finding from the evidence as follows:

1. That the Complainant, Mary M. Coston, owns real property, or an interest therein, situated in Shelby County, Alabama, being more particularly described as follows, viz.:

The SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 15, Township 21 South, Range 3 West.

2. That the Complainants, John J. Smith and wife, Ola Mae Smith, own real property, or an interest therein, situated in Shelby County, Alabama, being more particularly described as follows, viz.:

The W $\frac{1}{2}$ of E $\frac{1}{2}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 21 South, Range 3 West, except the South 620 feet thereof.

3. That said Complainants, their heirs and assigns and successors in title to their respective parcels, as designated above, own a right or easement from their said respective parcels, as designated above, over and across the following described strip of land, to-wit:

Commence at the SW corner of the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 15, Township 21 South, Range 3 West; run thence North 88 deg. 30 min.

East along the South boundary of said NW¼ of NE¼ 630 feet for point of beginning of said right of way; run thence in a North-erly direction to a point on the South boundary of the Siluria-Maylone Road; which is 655 feet West of the East boundary of said NW¼ of NE¼; run thence in a Westerly direction along said Siluria-Maylone Road 20 feet; thence run South 2 deg. 45 min. East 482.3 feet, more or less, to the South boundary of said NW¼ of NE¼; run thence North 88 deg. 30 min. East to point of beginning,

said easement being for a roadway over and across said strip of land for ingress and egress to and from their said respective parcels to the Siluria-Maylone Public Road.

4. That the public does not have any right, title, interest, or easement whatsoever in and to said strip of land described more particularly above in Paragraph No. 3, and that the roadway situated thereon is not public, but rather is private.

5. That the Respondent, James H. Donney, and his tenants and heirs and assigns and successors in title to the parcel of real estate which is owned by said James H. Donney lying South of said Maylone-Siluria Public Road and West of and adjacent to said strip of land described more particularly above in Paragraph No. 3, own no right, title, interest, or easement whatsoever in and to said strip of land described more particularly above in Paragraph No. 3, and do not have any right whatsoever to enter, cross, or use said strip of land described more particularly above in Paragraph No. 3 for a roadway, or for any other purpose.

6. That the Respondent, James H. Donney, immediately before the filing of the Bill of Complaint, in this cause, did state and claim to the Complainants and others that said strip of land described more particularly above in Paragraph No. 3 and that the roadway thereon was a public road and that he and his tenants had the right to use the same; that, after being informed

by the Complainants that said roadway was private and that he and his tenants did not have permission to use the same, said James H. Denney and his tenants did in fact use, and did continue to use, the said roadway by entering and traveling thereon and thereover, and that said James H. Denney did state and claim that he and his tenants would continue to use the same, and further, that he intended, if said roadway was closed, or if he or his tenants were denied the use thereof, to stir up dust particles and thereby cause the Complainants annoyance and inconvenience and render their respective parcels, as designated above, less valuable.

6. That there was subsisting an actual controversy in this cause between the parties hereto on which substantial property rights were dependent at the time of the filing of the Bill of Complaint in this cause, and that it was and is necessary that said controversy be determined by this Court in order that the respective rights and authority of the Complainants, and of the Respondents and his tenants be determined in and to said strip of land described above more particularly in Paragraph No. 3.

IT IS THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED by the Court as follows:

A. That the Complainants and their heirs and assigns and successors in title to their respective parcels, as designated above, have a private right or easement to use and enjoy the private roadway which presently exists over and across the strip of land described more particularly above in Paragraph No. 3, said private roadway connecting said property of the Complainants with the public road known as the Siluria-Maylene Public Road, and that the Respondent, James H. Denney, and his tenants and heirs and assigns and successors in title to the property designated above and identified as being the property of the Respondent, have no right, title, interest, or easement whatsoever in and to said strip of land described more particularly

above in Paragraph No. 3, nor in the roadway situated thereon, and have no right to enter or travel thereon and thereover.

B. That the Respondent, James H. Denney, and his tenants and heirs and assigns and successors in and to the property designated above and identified as being the property of the Respondent, are perpetually restrained and enjoined from entering or using in anymanner, said strip of land described more particularly above in Paragraph No. 3 and the roadway situated thereon, and are further perpetually restrained and enjoined from entering or trespassing thereon and from stirring up dust particles in order to cause the Complainants, their heirs and assigns and successors in title, annoyance and inconvenience.

C. That a certified copy of this decree be recorded by the Register in the Office of the Judge of Probate of Shelby County, Alabama, and that it be indexed in the names of the Complainants and the Respondents, and that a certified copy of thereof also be served on said Respondent, James H. Denney, by any lawful officer of the State of Alabama.

D. That costs in this cause be taxed against the Respondent, James H. Denney, for which let execution issue.

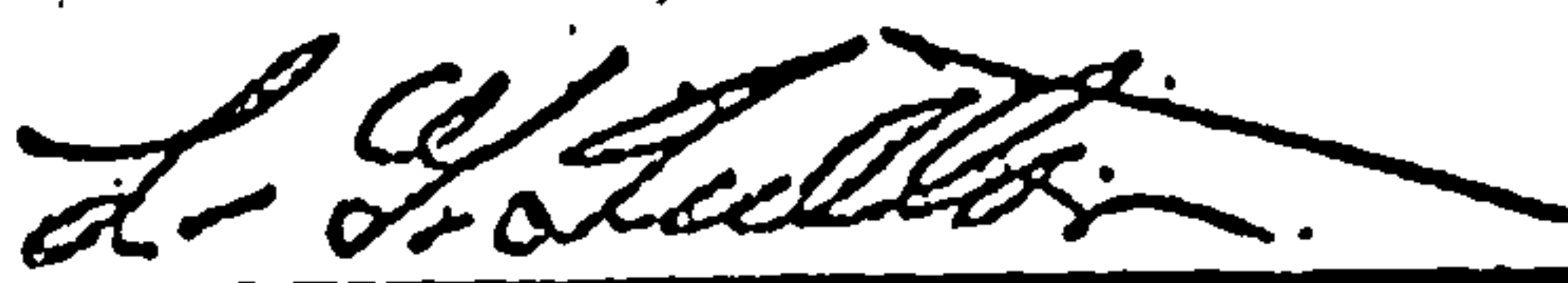
DONE AND ORDERED this 8 day of June, 1970.

~~S/ Harold E. Waldon~~

STATE OF ALABAMA
SHELBY COUNTY

I, L.G. Fulton, Register of the Law and Equity Court of Shelby County, Alabama, do hereby certify that the foregoing is a true and correct copy of the original decree entered and rendered by the Judge of the Law and Equity Court of Shelby County, Alabama, in the above styled cause, which said decree is on file and enrolled in my office.

Witness my hand and seal this the 8 day of June, 1970.


Register of the Law and Equity Court of
Shelby County, Alabama

FILED IN OFFICE, This 8 day of June, 19 70
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BOOK 263 PAGE
L.G. Fulton
Clerk
In Office Register of
Law and Equity Court of Shelby County

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
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