

# *Bennett v. Garrett, 1922*

## When Arlington Became Arlington?

*By Sean Denniston*

*It is the smallest and most populous county in Virginia. The overflow population of Washington has been quick to appreciate the Virginia plateau for residential purposes. There have grown up in this section a number of communities settled almost wholly by people who work in Washington. Such as Clarendon, Ballston, Cherrydale, Arlington, and Falls Church.<sup>1</sup>*

### Introduction

Arlington County is a single governmental entity. Unlike other Virginia counties, there are no incorporated towns. If not for a 1922 court case, it's possible that in 2022, some residents—reusable bags in hand—could be shopping at their town's newest Trader Joe's. Alas, we are not reading “Ballston Patch” or “Clarendon Now” on our iPhones. Why?

On June 15, 1922, the Supreme Court of Appeals (now the Virginia Supreme Court) held in *Bennett v. Garrett* that Arlington was one “continuous, contiguous, and homogeneous community.”<sup>2</sup>

That *Bennett v. Garrett* ended the possibility of incorporated towns within Arlington County makes it important. However, the explanation of the case is often limited to a footnote that *might* mention it was the Clarendon neighborhood wanting to incorporate. Why did Clarendon want to become its own town, who spearheaded the effort, and what were the proposed boundaries? Finally, what can we learn about the Arlington of one hundred years ago?

As 2022 is the 100th anniversary of *Bennett v. Garrett*, it's an appropriate time for a reexamination to see if this “footnote” is really when Arlington became Arlington.

### When Alexandria County became Arlington County

In 1920, Arlington had a new name differentiating it from the similarly named—sometimes confusingly so—Alexandria.<sup>3</sup> Arlington at

32 square miles was Virginia's smallest county, and because of a 1915 annexation by the City of Alexandria, five hundred acres smaller.<sup>4</sup>

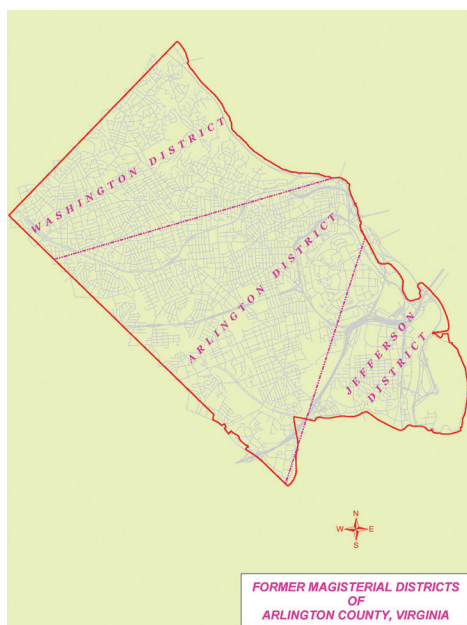
A hundred years ago, Arlington County was divided into magisterial districts: Washington in the north, Arlington in the center (where our story takes place), and Jefferson in the south (Fig. 1). The county went from slightly north of Chain Bridge to Route 7 (King Street). At Route 7, it continued south, going east around Old Town Alexandria to the Potomac. Most of Jefferson District was annexed in 1929, and if you shop at Potomac Yards, watch soccer in Arlandria, grab dinner in Del Ray, or visit a friend in Rosemont, you're in what was once Arlington!

In 1920, the Arlington County population was 16,040. (The 2020 population was 238,643.) Arlington had villages and working farms along rural roads crisscrossing the county. While mostly an agricultural county, there were brickyards and at least one brewery. Trains and trolleys connected to Washington and points south and west. Potomac

Yards was one of the largest rail yards in the United States. Then and now, the Federal Government had a significant presence. The Department of Agriculture operated a 400-acre experimental farm along the Potomac. The Army was at Ft. Myer, and the Navy operated "Three Sisters," one 600- and two 450-foot radio towers, then the tallest in the world. Arlington National Cemetery, founded during the Civil War in 1864, was hallowed ground.

While conventional Arlington history describes farms being turned into

*Fig. 1: Map of Arlington County and part of the City of Alexandria divided into its former Magisterial Districts.*



Courtesy of Luis Araya, Arlington County

subdivisions and the county changing from rural to suburban, the reality is more complicated. To think of 1920 Arlington as a “streetcar suburb,” where increasingly Federal employees drawn to Arlington by its location and affordability lived on orderly streets of single-family bungalows, would be an idyllic and inaccurate impression. Among the bespoke bungalows and mail-order Sears Homes were houses with tar pitch roofs, blocked drains, and cesspools on unpaved, unlit streets.<sup>5,6</sup>

Arlington was also segregated. In 1920 Blacks made up 13.8 percent of the county population living in 653 of Arlington’s 4,156 homes.<sup>7</sup> Black communities in Green Valley, Queen City (site of the Pentagon), and Halls Hill had a proud parallel existence with their own stores, churches, and even volunteer fire departments.

### **When Alexandria County, District of Columbia, became Alexandria County, Virginia**

Annexations and incorporations did not happen in a vacuum. They were the result of changes to the Virginia Constitution and the Code of Virginia and to communities believing annexation or incorporation would be both beneficial to their growth and introduce or improve basic services.

In March 1847, land ceded by Virginia creating Alexandria County, District of Columbia, retroceded to Virginia as Alexandria County, Virginia.<sup>8</sup> There was the “town” (today Old Town, City of Alexandria) and the “country” (most of today’s Arlington County). Alexandria had the port. Arlington had the farms.

### **From Rebellion to Reintegration**

The Virginia Constitution of 1870 marked the state’s formal reintegration into the Union after the Civil War and Arlington’s integration back into Virginia after four years of military occupation. The 1870 Constitution enshrined a Bill of Rights, banned slavery, and granted the vote for Black men over twenty-one. It created government structures, some still in place today.<sup>9</sup>

The 1870 Constitution also established “Independent Cities,” in effect county equivalents separate from the counties they adjoined or were within. Each city had a mayor, council, and dedicated courts. Counties subdivided into townships (later called “magisterial districts”). Courts

could serve a single or multiple counties. Counties annually elected a “mini government” comprising of a supervisor, township clerk, assessor, collector, commissioner of roads, overseer of poor, constable, and justices of the peace.<sup>10</sup> Alexandria City and Alexandria County (Arlington) were now separate municipal entities.

Thirty years later came the paradoxical Virginia Constitution of 1902. It notoriously instituted a poll tax, a literacy test, and property requirements in order to prevent Blacks from voting. While rolling back the civil and voting rights of African Americans, it embraced Progressive Era reforms of public free schools, state boards overseeing prisons and hospitals, and creation of the State Corporation Commission to regulate powerful railroad, telephone, and telegraph interests.<sup>11</sup>

The 1902 Constitution instituted governance changes. It organized “incorporated communities,” where places with a population of 5,000 or more were cities, and those with fewer than 5,000 were towns.<sup>12</sup> Other communities were organized under county government.<sup>13</sup> Section 126 stated for those wanting to incorporate or annex territory:

The General Assembly shall provide by general laws for the extension and the contraction, from time to time, of the corporate limits of cities and towns; and no special act for such purpose shall be valid.<sup>14</sup>

The 1902 Constitution required the annexation and incorporation process be codified and consistently applied as a general law. The General Assembly complied, and Chapter 116 was added to the Code of Virginia (1919).<sup>15</sup>

As a Virginia county, Arlington government had county and magisterial district elected officials. Countywide elected officials served four-year terms. Qualified voters elected one supervisor in each of Arlington’s three magisterial districts, who jointly formed a county Board of Supervisors. Supervisors served four-year terms and met once a month. Powers included setting county and district levies and maintaining county roads. In 1912, the General Assembly expanded Arlington’s local powers to those of cities and towns, enabling the Board of Supervisors to propose laws or statutes. A circuit court judge would hear arguments and affirm or deny them.<sup>16</sup>

In 1920, Arlington's Board of Supervisors and other elected officials were:

Thomas J. DeLashmutt, Arlington District, Chairman  
Edward Duncan, Jefferson District  
W. T. Weaver, Washington District  
(Frank Upman, Washington District, February 20–April 12, 1920)  
William H. Duncan, Clerk of Circuit Court  
Frank L. Ball, Commonwealth Attorney  
Harry K. Green, Commissioner of Revenue  
Andrew Cornelius Clements, Sheriff <sup>17</sup>

The DeLashmutt family were politically active for much of the twentieth century and still have Arlington business interests.<sup>18</sup> Frank Ball's ancestors settled in Arlington in the 1700s, and "Ballston" was named for the family. While these individuals and families represented an "old Arlington" that had long shaped the county's history and government, a "new Arlington" was emerging from new developments and residents.

### **When Clarendon became Clarendon**

On October 7, 1897, Mary E. Nesmith sold twenty-five acres by what is now the Clarendon Metro Stop to Robert Sprague Hall of Boston. Soon after, the land "flipped" to Robert Treat Paine Jr., also of Boston. Paine developed a six-street subdivision and named it "Clarendon." On March 31, 1900, "The Town of Clarendon" was dedicated with fanfare and a parade.<sup>19</sup> Other developers followed, and by 1920, Clarendon grew to a population of 2,300–2,500 with at least seventeen streets.<sup>20</sup> As with other Arlington subdivisions, racial covenants were enforced.<sup>21</sup>

### **Do it for Clarendon!<sup>22</sup>**

As subdivisions became nascent towns, citizen associations were created for concerted action to improve their communities and advocate for their area of the county to the County.<sup>23</sup> In the spring of 1904, the Clarendon Citizens' Association (CCA) was founded and by its own words was:

[T]he most active association for the development of civil interests in the State of Virginia and with the one idea of making Clarendon what it should and shall be—one of the most attractive spots within easy reach of the business sections of Washington.<sup>24</sup>

Several association leaders were Federal employees. President Reginald H. Colley and First Vice President Frank L. Sharp worked at the Department of Agriculture and Interstate Commerce Commission, respectively. Eugene Lester (E. L.) Bennett, a past president, worked at the Navy Department.<sup>25</sup>

### **Officers 1920**

President: R. H. Colley*	Recording Secretary: F. B. Keefer
1st Vice President: F. L. Sharp*	Corresponding Secretary: A. A. Moore
2nd Vice President: W. F. Carr	
3rd Vice President: William Friess*	Treasurer: A. J. Porter*

### **Incorporation Water and Sewer Committee**

A. P. Payne, Chairman*	William Friess*
J. M. Walsh	L. H. Thompson
A. D. Langley	(*incorporation trial witness)

In 1919 and 1920 the Clarendon Citizens' Association adopted a new constitution. While progressive in its aspirations for Clarendon, it was of its time:

Any white person, 18 years of age or over, who shall be a resident of Arlington County, or an owner in Clarendon or its vicinity, whose application shall have been approved by a majority of the Executive Committee may become a member of this Association.<sup>26</sup>

Dues were \$1.00 a year.

In 1920, the association published *Clarendon, Virginia*, a booklet that in the boosterism of the time described its myriad activities. Clarendon had third parties provide gas, lights, and a telephone exchange directly

connected to Washington. CCA members volunteered for the Fire Department and served on the Roads and Streets, School, Parks, Public Utilities, Sanitation, Public Order, Building, and Auditing committees.<sup>27</sup> Through public subscriptions, the Citizens' Association funded improvements for roads and schools, and their July 1918 campaign raised \$500 for a "motor driven apparatus," a 1919 Ford Truck followed with one 60-gallon chemical tank.<sup>28</sup> (Arlington County paid for the other tank.)<sup>29</sup>

Community progress was such that the Clarendon Citizens' Association proudly declared:

Under the forceful, stimulating influence of the Citizens' Association, the community has succeeded in purchasing the largest motor-driven chemical fire apparatus now operating in Arlington County; greatly improving the conditions of the streets; in placing metal street signs on all the street corners; in numbering all of the houses with uniform aluminum numbers; in securing house-to-house delivery of mail; and in initiating the all-important project of incorporation of the town and installation of water and sewer systems.<sup>30</sup>

The booklet listed churches, fraternal organizations, and community activities including the Clarendon Band, Clarendon Athletic Club, and Patrons' League (parent teacher association). For the commuter, it provided a schedule of streetcar service to Washington, DC. For those remaining at home, there were nineteen pages of advertisements from banks to accountants, butchers to dairies, building contractors to realtors, and hats to "Stouts" (full size women's clothing).<sup>31</sup>

The CCA *cum* fire engine house occupied a building that still exists at the intersection of Wilson Boulevard and Fairfax Drive.<sup>32</sup>

### **"The Town of Clarendon"**

What do we know about "Town of Clarendon"? It would have been entirely within the Arlington District, measuring out at 701.9 acres. Within its borders was Clarendon and other subdivisions, homes on paved and unpaved streets, and multi-acre parcels primed for future development. The population was estimated at 2,500 and counted 659 homes (Figs. 2 and 3).<sup>33</sup>

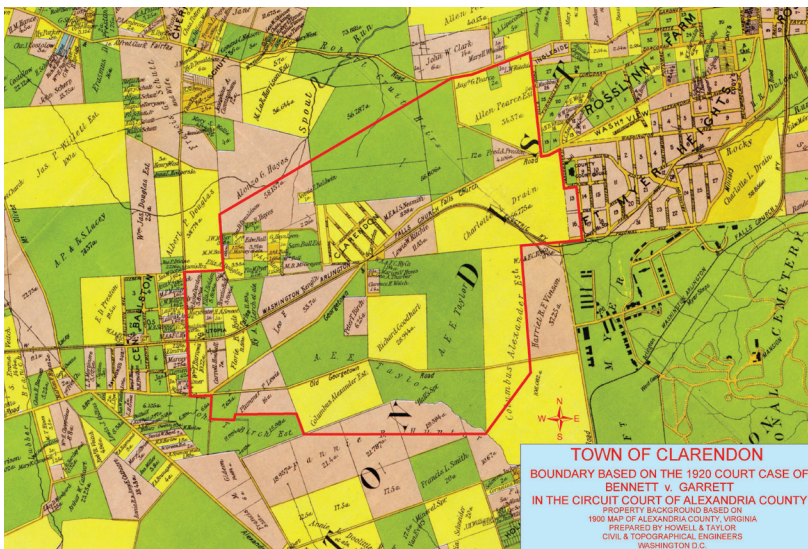
## When Arlington Became Clarendon?

Before *Bennett v. Garrett* there was *In Re Clarendon Incorporation*. In December 1919, a petition signed by twenty electors from Clarendon, praying for incorporation as a town, was filed in the Circuit Court of Alexandria County as *In Re Clarendon Incorporation*:

Your petitioners claim and allege that they are also the vast majority within said survey favor to become an incorporated town; and they further allege that if Your Honor adjudges and orders said Incorporation, their comfort, happiness, safety, health, and the enjoyment of lives and property within said community will be greatly promoted.

Property values will be greatly increased, and that said community would forthwith enjoy a larger and greater local self-government, greater police protection, increased fire protection, greater water and sewerage facilities, improved and more healthful living conditions, better lights, and many other advantages.<sup>34</sup>

Fig. 2: Portion of a 1900 map of Arlington County with the desired Clarendon township boundaries highlighted in red.



Fourteen additional petitions collected in June 1919 supporting incorporation were also submitted.

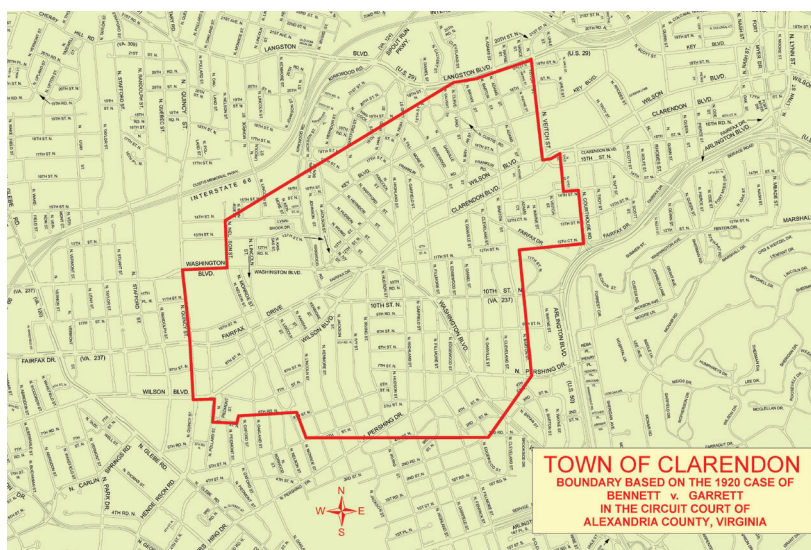
In December 1920, those opposing incorporation (“respondents”) submitted eight petitions stating:

Undersigned, residents, and landowners and taxpayers of Alexandria County, Virginia, hereby enter our protests against the proposed incorporation of Clarendon.

We are of the opinion that the Incorporation of Clarendon will not only be against the best interest of Clarendon itself but would seriously hamper and retard the future growth and development of the entire county.<sup>35</sup>

On April 29, 1920, *In Re Clarendon Incorporation* was heard in front of Judge Samuel G. Brent. Brent was a local worthy having served as President of the Alexandria National Bank and as a counsel for the City of Alexandria in its 1915 annexation case.<sup>36</sup> Charles F. Harrison

*Fig. 3: Portion of a current map of Arlington County. The boundaries, highlighted in red, are based on the 1920 case Bennett v. Garrett.*



Courtesy of Luis Araya, Johanna Meyer, Bridget Obikoya, Bruce Woodhams

(1877–1947) represented petitioners.<sup>37</sup> William C. Gloth (1886–1944) and Harry R. Thomas (1878–1965) represented respondents.<sup>38,39</sup>

It was then for the court to determine “that the general good of the community will be promoted by the incorporation.”<sup>40</sup> Petitioners argued that Clarendon was a separate and distinct community, the majority of residents favored incorporation with their own municipal government, and it was financially viable. Respondents countered that Clarendon was part of one continuous community, and while most Clarendon residents favored incorporation, next door Ballston did not. Respondents also challenged Clarendon’s financial viability; more so, if compelled to take control of its schools and roads.

The trial revealed a subplot: a disdain for newer residents by the county’s political and business leaders.

### **Clarendon is a Separate and Distinct Community**

Petitioners argued Arlington was already several communities. The subdivisions from Rosemont to Glencarlyn were distinct communities, and their citizens associations had taken on many responsibilities of a town.

It is admitted that there are a large number of settlements after you leave the Virginia end of Aqueduct Bridge going Eastward into Virginia, such as Rosslyn; Aurora Heights; Fort Myer Heights; Clarendon; Ballston etc. etc. Still, they are each separate and distinct communities. You could not *reasonably* consider them as ONE community. It would be entirely *UNREASONABLE* to Incorporate them as *one*.<sup>41</sup>

Respondents countered there was a “mingling of Ballston and Clarendon” and no way to define Clarendon—in the middle of the county and thickly settled—as distinct from Arlington County. Arlington County was not only the smallest in Virginia but also “a suburban section overlooking Washington.”<sup>42</sup>

Testimony and filings from the adjacent Ballston Citizens’ Association argued *their* general good would not be served by incorporation. Clarendon’s incorporation would “about cut Ballston in half.” Finally, Ballston and Clarendon could get the things they each

needed by another method quite as effective and less expensive than incorporation.<sup>43</sup>

When respondent attorney Gloth challenged R. H. Colley, President of the Clarendon Citizens' Association, that in fact the subdivisions surrounding Clarendon are contiguous and continuous with it, Colley defiantly responded, "I admitted they are contiguous. I will not admit the continuity."<sup>44</sup>

Referencing a map, County Engineer George E. Garrett ("Garrett" in *Bennett v. Garrett*) testified that "right along the other road [Wilson Boulevard] you have a virtually connected series of subdivisions reinforced by the closeness of stops on the trolley and train routes."<sup>45</sup> Petitioner's counsel Harrison countered that the Great Falls and Old Dominion lines do not run through Clarendon. Garrett gamely replied, "I could not say they are contiguous to Clarendon, but they are contiguous to other subdivisions which are contiguous to Clarendon."<sup>46</sup>

According to petitioner H. C. Saffell, Ballston was literally dumping on Clarendon:

I will tell you this—that I heard someone from Ballston brag in the citizens' association that on their day they had the citizens over there bring over all their tin cans and rubbish and dump it right down on Taylor Avenue and Spruce Street, and they got up in the front of the citizens' association and bragged that they had dumped their stuff on Clarendon.<sup>47</sup>

### **The Majority of Clarendon Favored Incorporation**

*The present situation is intolerable affording the local parasite and tax dodger the opportunity to obtain a small measure of local protection and local improvement without contributing one cent to it.*<sup>48</sup>

Petitioners argued that Clarendon, with a population estimated at 2,500, was an anomaly by *not* being incorporated as communities of comparable size were towns.<sup>49</sup> Incorporation support was demonstrated by hundreds signing petitions and the Clarendon Citizens' Association having over three hundred dues-paying members.

Respondents in testimony and a series of petitions claimed, "Alexandria County has many subdivisions, and we are of the opinion that it

would seriously affect the growth and development of the County if the same is cut up into small municipalities.”<sup>50</sup>

Cherrydale druggist Frank E. Stone, listed several shortcomings of the current arrangements and why he thought Clarendon was prepared to be its own town:

Because I think we can have a more active government and a better government than we are being governed by now. We need more police protection. We need our streets better lighted, and we need water and sewage, which I think we could get if we were incorporated and get it very soon.<sup>51</sup>

While murders were rare in Arlington, there were cases of theft, larceny, and juvenile delinquency. Arlington had a single sheriff supported by part-time special constables, and Saffell explained his concern and dissatisfaction:

Very often I am away from home at night, and no one is home but my wife. If anything should happen, she would not know what to do, and we do not know where to call for fire or police protection.<sup>52</sup>

In his testimony, Stone mentioned his chicken roost was robbed. He also stated:

I think every home in Clarendon is armed, and I think that fact is known to a certain rough element. There have been reports of robberies in the neighborhood of Spruce Street [North Fillmore] not over eight months ago.<sup>53</sup>

Stone explained that a nearby house was burgled, and streetlights were difficult to maintain because they were stolen, or boys threw stones at them.<sup>54</sup>

George H. McCrillis, a plumber, gave testimony on sanitary conditions:

I might say, in two-thirds of the houses of Clarendon today, are very unsanitary... We have no health department that

rules as to what you can install. There is every form of bathtub in these houses that were put in, and some even without traps. Others have traps have not been sealed. Gas escapes and go through the houses.<sup>55</sup>

Respondents countered with information on the actual number of special constables and challenged witnesses' direct knowledge of criminal activity. As for McCrillis, he was asked if all the plumbing he installed was "all right," and they reminded him that houses with septic tanks or cesspools must submit those plans to the Board of Health.<sup>56</sup>

### **Was Virtually a Contest**

Harrison raised an alternative argument that incorporation "was virtually a contest between the community of *Clarendon* on the one and the *rest of the County on the other*. With local jealousies, prejudices etc., supporting the fight."<sup>57</sup>

Petitioners claimed an "Arlington County ring" of old-time residents were the sole opponents to incorporation. They noted witnesses against incorporation who included Thomas DeLashmutt, Walter T. Weaver, A. C. Clements, and Frank Ball. DeLashmutt was a county supervisor. Weaver was an ex-supervisor and now president of Arlington Trust, where county funds were deposited. Andrew Clements was Sheriff, and Frank Ball was Commonwealth Attorney.<sup>58</sup>

Petitioners may have been on to something.

Respondents believed those new to Arlington and lacking county knowledge were leading the incorporation effort. During cross-examination, respondent attorney Gloth stressed that Colley was only a two-year resident of Clarendon and not a qualified voter at the April 1918 election, contrasted with A. C. Martens, a 40-year resident, and Frank Ball, a 35-year resident as well as Commonwealth Attorney, "whose first 28 years was spent [in] what is now known as Clarendon."<sup>59</sup>

Respondents' lawyer, Gloth, contemptuously compared E. L. Bennett's seven-year residency to "E. W. Ball and George E. Garrett who lived here and have been associated here all their lives. You do not want to put your opinion against theirs?"<sup>60</sup>

## Clarendon Can Support Local Government

*Municipal Government, comprised of citizens within its own limits, who will have uppermost in their minds and hearts the welfare of Clarendon and the promotion of its best interests.*<sup>61</sup>

Even with Clarendon uppermost in the minds and hearts of its citizens, was it financially viable? Could Clarendon issue enough bonds and use levies and fees to pay for itself? The 1902 Constitution limited municipalities issuing bonds or other interest-bearing obligations to 18 percent of the assessed valuation of real property.<sup>62</sup> The respondents thought not.

Clarendon was bullish on their financial viability. Assessed property values were increasing as was its revenue potential via bonds, taxes, and levies. Petitioners projected Clarendon's real property assessed value as of 1918 at \$971,560 and would increase to \$1,271,560 by 1920, adding the value of one hundred homes under construction.<sup>63</sup> Clarendon would then have a maximum bond amount of \$228,800 and anticipated bond revenue, license fees, taxes, and levies would raise \$8,605. Additional revenue would flow in from the transfer to Clarendon its share of Arlington County's personal property valuation and a projected \$15,400 through the charge for water and sewer connections to fifty-five homes. In total, Clarendon claimed revenues of \$27,250 against \$23,876 of expenses. The \$27,250 would pay for fifty streetlights, two water system wells, roads, annual school costs, and a town sergeant, with a surplus of \$3,374.<sup>64</sup>

Respondents were bearish on Clarendon's financial viability. They pegged Clarendon's real property assessed value being lower than petitioners estimated and bond amounts as well, at \$971,000, for a maximum bond amount of \$174,780. They also projected the cost of Clarendon government at \$23,400 (\$476 less than petitioners estimated).

Respondents front-loaded costs to make Clarendon appear even less viable. They claimed Clarendon would have to spend \$225,000 on its own water and sewer system and \$70,000 for a new school (the cost of recently built Clarendon School).<sup>65</sup> On roads, they noted that Arlington County spent \$3,488 on Clarendon's roads in 1919 (more than any part of Arlington District), and Clarendon was claiming it could have the same level of maintenance for \$2,000.<sup>66</sup>

Respondent's attorney, Gloth, noted that Payne was only a two-year resident of Arlington and was not eligible to vote in the 1918 local elections. To further discredit Payne, Gloth also asked him a series of

“gotcha” questions on his knowledge of Clarendon streets, population, and the Arlington District.<sup>67</sup>

In trials, there’s sometimes an unexpected moment provided by a witness, or in this case the petitioners’ lawyer. In arguing for Clarendon’s financial viability, Harrison asked to take the stand. When denied by Judge Brent, Harrison cross-examined himself:

Do you know any town in the State of Virginia where the taxable variation is approximately the same as would be in the case of this incorporated community; whether such a town is able to finance successfully municipal improvements such as sewers, water, electric lights paving streets, police protection, and so forth?

Yes sir, the town of Leesburg, Virginia.<sup>68</sup>

Clarendon’s more conventional testimony stated that road improvements were a priority but would follow population growth. Clarendon believed they could raise money on bonds and were entitled to the county’s share of school and road levies.<sup>69</sup>

In an example of *realpolitik*, the Board of Supervisors forwarded to Judge Brent a resolution opposing Clarendon’s incorporation.

Be it further resolved that in case said incorporation be granted the court is hereby respectfully petitioned to require said town to assume all responsibility for schools and roads within the incorporated territory as a separate road and school district.<sup>70</sup>

### **Coveting Cruit**

The Cruit Farm, partly located in Clarendon, was another source of acrimony during the trial. Chapin Brown appeared as a witness on behalf of Evania F. Mackall, Kate Dean Owen, and Jesse Owen Cugle, the three women who were heirs to the remaining 167 acres of the undeveloped farm. Brown was one of two court appointed commissioners ordered to sell Cruit Farm, without success. The property was valued at \$87,000 and as a farm was underperforming.<sup>71</sup>

Petitioners considered it unrealistic keeping a farm in a fast-developing county, depressing its value. They felt Cruit Farm held

potential for tax benefits while commissioners fretted incorporation could lower the sales value by 20 percent. The farm's future value was not in crops but houses.<sup>72</sup>

### **Clarendon and County Health**

Respondent witness Dr. J. W. Cox, the County, State, and Federal Health Officer, opposed incorporation on sanitation grounds.<sup>73</sup> Cox detailed the “pre-sanitary” conditions in Arlington and the scale of the challenge to remedy. Arlington's Department of Health deployed scavenger wagons to more than 1,400 homes including to the three adjacent communities of Clarendon, with 396 homes; Cherrydale, with 410 homes; and Ballston, with 355 homes.

Cox argued it was not possible to pick out a thickly settled community and that “whatever affects the health of Clarendon affects the suburbs and what affects the suburbs affects Clarendon.” In a parallel strategy of forcing Clarendon to take over its own roads and schools, Cox testified, Clarendon would have to create a separate and distinct health unit not in conjunction with Arlington County. This would be a “menace” to Ballston, Cherrydale, and Fort Myer Heights.<sup>74</sup>

In rebuttal, petitioners' medical expert, Dr. S. T. Noland testified that sanitary conditions in Clarendon were distinctly bad, and an epidemic could break out, killing 10–25 percent of the inhabitants.<sup>75</sup> In response to this alarming testimony:

Gloth asked, “How long have you lived in Alexandria County [Arlington]?”

Noland responded, “Since October 3, 1919 [around six months at the time of the trial].”

Gloth continued, “How many cases of typhoid fever have you heard of in the County of Alexandria since you have been here?”

Noland responded, “I have not had any.”<sup>76</sup>

Dr. R. N. Sutton, also for the petitioners, testified that Clarendon sanitation was bad because of lack of water and sewage systems and would be improved “under a little different management.”<sup>77</sup>

### **Water and Sewer**

Providing water and sewers was the most important single issue related to county development. Towards these ends, petitioners spent

\$500 to produce an engineering report (Appendix II). The report's findings, accepted by both parties, revealed that a considerable amount of work was necessary, whether done by Arlington County or the "Town of Clarendon."

The report planned water and sewer for 2,125 people with a reserve capacity for 4,000. It identified 600 acres north, east, and south of the existing Clarendon subdivision, estimating 389 residents being provided with water and sewers and the remaining 211 acres being completed later depending on population growth. Construction would involve moving some 32,000 cubic yards and the purchase of 8,900 linear feet of pipe of different sizes, 135 manhole covers, 95 double nozzle fire hydrants, pumping and disposal facilities, and a 100,000-gallon tank.<sup>78</sup> Petitioners believed the system would raise revenue, like the Alexandria Water Company.

Respondents argued for a "better together" approach. Arlington County had set aside \$10,000 to study sanitary systems. They argued that the proposed sanitary bill would give Clarendon what it wanted as part of an Arlington sanitary district. The bill made construction more likely by conferring on Board of Supervisors the power of eminent domain and authority to issue bonds.<sup>79</sup>

Petitioners were concerned this would give the Board of Supervisors "autocratic control" and future incorporated communities would have no say in planning and construction. Petitioners stressed they weren't working in a vacuum. They met the County Engineer who reviewed their plans and were open to ongoing cooperation. Clarendon claimed that if their construction had already started, its system could be connected to Arlington's later.<sup>80</sup>

The incorporation trial concluded on May 4, 1920, after four days, including a Saturday session.

Judge Brent issued his ruling from the bench:

It is therefore ADJUDGED and ORDERED that the Prayer of the said petition for Incorporation of the proposed town of Clarendon as set out in the said petition filed herein be and the same is hereby denied.<sup>81</sup>

### ***Bennett v. Garrett***

The Circuit Court decision was appealed. On March 7, 1922—almost two years later—the Virginia Supreme Court of Appeals heard the case as *Bennett v. Garrett*.<sup>82</sup> Petitioners (now called “plaintiffs”) claimed trial court errors such as allowing into evidence the petitions of eight respondents (now called “defendants”) and not striking testimony on the effect incorporation would have on schools, since Clarendon could not be compelled to become a separate school district. The court also erred by preventing testimony (by Harrison himself!) about Clarendon’s ability to meet its financial burdens. After all, Leesburg, an analogous community, had successfully done so.<sup>83</sup>

On June 15, 1922, Supreme Court of Appeals upheld the Circuit Court decision, claiming the court was “clearly right” excluding Harrison’s testimony, calling Leesburg a collateral fact. While no law compels an incorporated community to take over schools, the motion to strike was overly broad, and no evidence presented it as prejudicing the plaintiffs’ case. As the appellate court, they applauded the latitude accorded to lower courts, citing their superior knowledge of local conditions and hearing the evidence in person.

The court held that:

The whole of Arlington County comprises a very small area, and it is densely populated. From the evidence in this case, it appears doubtful that any small town could be chartered therein without detriment to the general good of the county.<sup>84</sup>

Citing *Board of Supervisors of Norfolk County v. Duke*, Clarendon, like Pinners Point in Norfolk, was thickly settled, and both had through streets without interruption. The whim of a limited portion of the people cannot impose a decision that could cause the entire community great and unnecessary burden. Clarendon, like Pinners Point, was part of one “continuous, contiguous, and homogeneous community.”<sup>85</sup>

### **Continuous, Contiguous, and Homogenous?**

And what about “continuous, contiguous, and homogeneous?” If “continuous” meant an uninterrupted, unbroken whole, and “contiguous” a shared common border, what about “homogenous”? “Homogeneous”

was the only part of the holding not based on land use and settlement patterns. It was based on race. Petitioners pointed out, “Clarendon is a town of 500 homes all of which are occupied by an unusually high class of white citizens.”<sup>86</sup> Respondents retorted Clarendon is where:

all the people living in these communities are white. They are homogeneous in population and in real interest... There are not racial differences between people living in these various subdivisions, with the exception of a very small colored settlement on the extreme west end of Ballston. All of the people living in these communities are white.<sup>87</sup>

Petitioners went further, disputing the veracity of respondents’ petitions:

The attorneys here, in their eagerness to get signers against incorporation, have enlisted the services of 66 who are known to be negroes. There is not one negro in Clarendon, nor can one rent or own property there by reason of restrictions that carry with the land. Our citizenship is of an unusually high type of practically all of the people owning their homes, and of a high degree of intelligence.<sup>88</sup>

While Arlington was fast growing, and seeds were planted towards the modern municipality, it was one seen through the prism of its white inhabitants.

## Conclusion

In 1922, Arlington was at the junction of rural and suburban. Farms and housing subdivisions coexisted. Longtime Arlingtonians were joined in increasing numbers by those from elsewhere, often with the Federal Government. *Bennett v. Garrett* ended the possibility of towns from “inside,” while in 1929 Arlington lost an additional 2,600 acres to the City of Alexandria that was from “outside.” Arlington (mostly) had its current size of 26 square miles.

While *Bennett v. Garrett* proposed incorporation, Chapter 211 of the 1930 Acts of Assembly banned annexations of counties less than

thirty square miles, unless the entire county was annexed, following a referendum vote. No more land grabs.

In 1922, the Sanitary Bill passed the Virginia General Assembly, and Arlington's water and sewer lines were substantially completed in 1927 and 1937. In 1923, Cruit farm was finally purchased by Frank Lyon, and Lyon Village developed. In 1934, Arlington's current street-naming system was adopted, eliminating many duplicate names created by the subdivisions.

Most importantly, in 1930, the General Assembly passed an act allowing counties with populations of more than 500 to the square mile (i.e., Arlington) to change their form of government. Taking advantage, Arlington voted to change its government to a county manager and county board elected at large, and its magisterial districts were abolished. Arlington was now a "city-county."

*Bennett v. Garrett* helped facilitate these changes. While the Clarendon incorporation was denied, arguments for and against incorporation occupied hundreds of residents over several years, pitting subdivision against subdivision and new residents against an old county elite. Clarendon's desire to incorporate and the subsequent incorporation trial raised questions and forced answers to the following:

Would Arlington be a collection of communities or a single continuous and contiguous community? Was the government structure created for rural counties during Reconstruction representative of its residents (acknowledging the shortcoming of who was and was not represented), and was it the best way to govern a "fast growing county" of the Roaring Twenties?

One hundred years ago, a trial that started in the old county courthouse and ended at the Virginia Supreme Court of Appeals is when "Arlington became Arlington."

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### About the Author

Sean Denniston has been an Arlington resident since moving from Boston in 2007. He has history and law degrees and currently works as a project manager at the Federal Aviation Administration. Sean is also Secretary for the AHS Board of Directors. Sean became interested in *Bennett v. Garrett*, seeing it often referenced but rarely explained in various Arlington histories.

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APPENDIX I

Petitioners’ estimates of Clarendon’s revenue and expenses

Clarendon’s Real Property Assessed Value (1918)	Real Property Value, 100 homes to build between 1918–1920	Real Property Assessed Value (1920)	Bond limit	Maximum bond amount based on real property value
971,560	300,000	1,271,560	18%	\$228,800

Fee	Revenue	Expenses	Annual Cost
License fees	250	Town Government (and functions)	8,750
Water connection for 55 homes	9,900	Streetlights (50)	1,000
Sewer connection for 55 homes	5,500	Water system motor (2 wells)	900
Bond income	2,555	School Annual Costs	5,000
Road Levy	8,745	Town Sergeant (law enforcement)	1,500
Poll tax	300	Water System Bond interest (5% annual)	1,500
<b>Total</b>	<b>\$27,250</b>	Bond Interest	3,226
		Road	2,000
		<b>Total expenditures</b>	<b>\$23,876</b>

Respondent’s estimates of Clarendon’s revenue and expenses

Clarendon’s Real Property Assessed Value (1918)	Bond limit set by 1902 Constitution (Section 127)	Maximum bond amount based on real property value
971,000	18%	\$174,780

Expense	Cost	Total
Water and Sewer Construction	225,000	
School Annual Expenses	9,000	
Town Sergeant	1,200	
Town Government	10,000	
Annual Bond Interest	3,200	\$248,400

## APPENDIX II

David J. Howell, and Son, Civil Engineers, Washington, DC, "Report on Water Supply and Sewerage System for Clarendon, Virginia," September 3, 1919.

### Sewer and Water Needs

Sewer and Water	Area with sewer and Water (acres)	Area without sewer and water (acres)	Present/Future Population
Zone 1	163	115	875/1,500
Zone 2	132	34	1,000/2,000
Zone 3	94	64	250/500
<b>Totals</b>	<b>389</b>	<b>211</b>	<b>2,125/4,000</b>

### Sewer Construction

	Excavation (cubic yards)	Pipes (linear feet)	Manhole covers	Disposal Plants	Total Cost
Zone 1	15,000	30,100	60	13,000	40,000
Zone 2	11,000	24,000	50	17,400	37,000
Zone 3	7,000	4,800	25	5,000	17,000
<b>Totals</b>	<b>32,000</b>	<b>58,900</b>	<b>135</b>	<b>35,400</b>	<b>\$94,000</b>

The water costs included not only different size pipes and valves, but a 100,000-gallon tank and pumping equipment.

Water Equipment	Equipment	Cost	Water Cost
Pipes and valves	64,000 linear feet	64,000	
Fire Hydrants	95 (double nozzle)	5,700	
Wells	2 wells 100-foot depth	1,500	
Pumping	Foundation for tower and tank	1,500	
Tower and Tank	100 feet/100,000 gallons	11,000	\$130,000

### Summary Water and Sewer System Costs

Water system	\$130,000
<u>Sewer system</u>	<u>\$94,000</u>
Total	\$224,000

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### Endnotes

1. “Clarendon Making Strides Through Activities of Citizen’s Association,” *Washington Herald*, February 5, 1922.
2. *Bennett v. Garrett*, 132 Va. 397 (1922), citing *Board of Supervisors of Norfolk County v. Duke*, 113 Va. 94 (1912). The Norfolk, Virginia, community of Pinners Point petitioned to incorporate into the town of “Pinners.” The Virginia Supreme Court felt compelled to follow “Pinners” in denying Clarendon’s incorporation, as Arlington County, like Pinners Point, was but “one continuous, contiguous, and homogeneous community.”
3. Chapter 241 of the *1920 Acts of Assembly*. During most of the incorporation effort, Arlington County was known as Alexandria County, but this article uses “Arlington” to avoid confusion of two similarly named places.
4. *City Council of Alexandria v. Alexandria County and Others*, 117 Va. 230 (1915), C. B. Rose Jr., “Annexation of a Portion of Arlington County by the City of Alexandria in 1915,” in *Arlington Historical Magazine* 2, no. 4 (October 1964); Office of the County Manager, “A History of the Boundaries of Arlington County, Virginia,” (Arlington: Office of the County Manager, 1967).
5. “Testimony of Dr. Frank E. Stone, Bennett, et als., v. Garrett, et als. Record 712 from the Circuit Court of the County of Arlington, VA,” 46. (Hereafter “Record.”)
6. Testimony of Henry Cox (H. C.) Saffell, Record, 66.
7. *Bennett v. Garret*, Reply Brief on Behalf of the Petitioners, 6. The petitioners cited Commissioner of Revenue land books.
8. James B. Caton, *Legislative Chronicles of the City of Alexandria* (Alexandria: Newell-Cole Company, Inc., 1933), citing US Statutes at Large, 1846–1852, 114.
9. Virginia General Assembly, “Virginia Constitution, 1870,” in *Virginia Civics*, Item #521, <https://vagovernmentmatters.org/primary-sources/521.html> (accessed March 16, 2022).
10. Virginia Constitution 1870, art. VII, § 2.
11. Virginia General Assembly, “Virginia Constitution, 1902,” in *Virginia Civics*, Item #517 <https://vagovernmentmatters.org/primary-sources/517.html> (accessed March 16, 2022).
12. Virginia Constitution 1902, art. VIII, § 116.
13. Virginia Constitution 1902, art. VII.
14. Virginia Constitution 1902, art. VIII, § 126.
15. Chapter 116 (§§ 2881–2885) of the *Code of Virginia* (1919).

16. Chapter 349 of the *1912 Acts of Assembly*. The sanitary study conducted around the time of *Bennett v. Garrett* was authorized under this chapter.
17. Research and Records Committee, "County Officials in Arlington, 1870–1960," *Arlington Historical Magazine* 3, no. 3 (October 1967).
18. In December 2021, the DeLashmutt family sold Barcroft Apartments on Columbia Pike. *Sun Gazette*, January 13, 2022, "Questions linger on Arlington's part of deal of affordable-housing preservation," [https://www.insidenova.com/news/arlington/questions-linger-on-arlingtons-part-of-deal-for-affordable-housing-preservation/article\\_7dce9518-7471-11ec-89b8-57c3f863cd5a.html](https://www.insidenova.com/news/arlington/questions-linger-on-arlingtons-part-of-deal-for-affordable-housing-preservation/article_7dce9518-7471-11ec-89b8-57c3f863cd5a.html) (accessed June 26, 2022).
19. Dorothea E. Abbott, "The Roots of Clarendon," *Arlington Historical Magazine* 8, no. 2 (October 1986).
20. Testimony of R. H. Colley (Clarendon Citizens' Association President), Record, 20.
21. Samia Byrd, Janine DeWitt, Kristin Neun, "Mapping Exclusion: Locating Racially Restrictive Covenants in Arlington." Arlington Historical Society public presentation, March 10, 2022.
22. Slogan of the Clarendon Citizens' Association.
23. C. B. Rose Jr., *Arlington County, Virginia A History* (Baltimore: Port City Press, Inc., 1976, 2009), 168–169.
24. Clarendon Citizens' Association, *Clarendon, Virginia*, booklet, c. 1920.
25. *Washington Herald*, February 5, 1922. Bennett (1886–1949) was a World War I veteran and 42-year Federal employee, *Daily Press*, Newport News, Virginia, August 18, 1949.
26. "Constitution of the Clarendon Citizens' Association," Article I, section 2, in *Clarendon, Virginia*.
27. Ibid.
28. Ibid.
29. R. H. Colley testimony, Record, 40.
30. *Clarendon, Virginia*.
31. Ibid.
32. Since at least 1904, the centrally located site and building have hosted multiple uses including trolley stop, dry cleaner, and restaurant.
33. Petition for Clarendon Incorporation, Record, 349. No maps are known to have survived, but the incorporation petition's metes and bounds description, testimony, and court filings were used to recreate maps for this article.
34. Papers in Behalf of Petitioners, Record, 348.
35. Papers in Behalf of Contestants, Record, 363–365.
36. Rose, "The 1929 Annexation," 14–15.
37. Harrison was twice Mayor of Leesburg (1913, 1923) and Commonwealth Attorney (1933–1945). Town of Leesburg, Virginia, <https://www.leesburgva.gov/government/mayor-council/past-mayors-of-leesburg> (accessed April 16, 2022).

38. Gloth was a standout football player at University of Virginia and later a Commonwealth Attorney (1925–1931). William Conrad Gloth, Find a Grave, <https://www.findagrave.com/memorial/81097405/william-conrad-gloth> (Accessed April 25, 2022), *New York Times*, December 4, 1944.
39. Thomas was from an old Arlington family. He was an early President of the Arlington Bar Association and an Arlington County District Court Judge (1924–1932). Son Homer and grandson Harry were also Arlington District Court judges. George W. Dodge, Esq., “Arlington County Court Officials,” “Seventy-Five Years of Service, A Brief History of the Arlington County Bar Association,” *Arlington Historical Magazine* 2, no. 1 (October 2001).
40. Chapter 116, §§ 2881–2885, Code of Virginia (1919).
41. Petitioner’s Brief to Virginia Supreme Court of Appeal, Record, 6. The Aqueduct Bridge connected Georgetown to Virginia and was replaced by the Key Bridge in 1923.
42. Record No. 712, Supreme Court of Appeals of Virginia, “Brief on Behalf of the Defendants in Error,” 2.
43. Record No. 712, Supreme Court of Appeals of Virginia, “Brief of Defendants, Ballston Citizens Association and Others,” 6.
44. Colley testimony, Record, 26.
45. Testimony of County Engineer George E. Garrett (1871–1935), Record, 308.
46. *Ibid*, 314.
47. Testimony of H. C. Saffell (Government Clerk), Record, 74. Today the corner of North Fillmore and 10<sup>th</sup> Street North.
48. Petitioners’ Brief, Record, 8–9.
49. *Ibid*, 2.
50. *Ibid*, 366.
51. Testimony of Frank E. Stone, Druggist, Record, 45.
52. Testimony of Henry Cox Saffell, Government Clerk, Record, 66.
53. Testimony of Frank E. Stone, Record, 45.
54. *Ibid*.
55. Testimony of George H. McCrillis, Record, 80.
56. *Ibid*, 82.
57. Petitioners’ Brief, Record, 2.
58. *Washington Times*, March 20, 1922.
59. Testimony of Frank L. Ball, Record, 293.
60. Testimony of E. L. Bennett, Record, 330. Edward Wade (E. W.) Ball (1877–1953) was the brother of Frank Ball and Arlington County Treasurer, 1908–1932. He was later sentenced to two and a half years in prison in a 1932 county embezzlement scandal.
61. Petitioners’ Brief, Record, 8.
62. Virginia Constitution 1902, art. VIII, § 127.
63. Seventy-eight homes were built between 1918 and 1920.

64. Testimony of Alphonso Parke (A. P.) Payne (1874–1956), Chair of the Incorporation Committee, Record, 168–171.
65. Now the Arlington Arts Center, 3550 Wilson Boulevard.
66. Financial testimony appears in several places, but valuable detail is found on pages 133–138 of the Record, testimony of R. H. Colley, Record, 30–31, and A. P. Payne, Record, 168–171.
67. A. P. Payne Testimony, Record, 172.
68. Record, 163.
69. Record, 183.
70. February 9, 1920, letter from Clerk of the Court, William H. Duncan, to Judge Brent, transmitting Board of Supervisors resolution opposing Clarendon Incorporation. Record, 124–125.
71. Cruit Farm was valued at \$87,000 but only generating around \$600 annually from pasture and a rental house. Testimony of Chapin Brown, Record, 259–261.
72. Testimony of Chapin Brown, 259–261. Carolyn V. Boaz, “Lyon Village,” *Arlington Historical Magazine* 10, no. 1 (October 1993), Lyon Village file, Center for Local History, Arlington Public Library.
73. J. W. Cox was the county health officer from 1919 to 1923.
74. Ibid.
75. Testimony of Dr. S. T. Noland, Record, 323–324.
76. Ibid.
77. Testimony of Dr. R. N. Sutton, Record, 328.
78. David J. Howell, and Son, Civil Engineers, Washington, DC, “Report on Water Supply and Sewerage System for Clarendon, Virginia,” September 3, 1919, Petitioners’ Exhibit #2, Record, 332–339.
79. T. J. DeLashmutt testimony, Record, 219–221.
80. Cox testimony, Record, 322.
81. Judge Samuel E. Brent, Circuit Court of Alexandria (Arlington) County, Record, 375.
82. *Evening Star* (Washington, DC), March 17, 1922.
83. Petitioners’ Brief, Record, 3–4.
84. *Bennett v. Garrett*, 132 Va. 397 (1922), 407.
85. *Board of Supervisors of Norfolk County v. Duke*, 113 Va. 94 (1912), 101.
86. Petitioners Brief, Record, 7.
87. Brief of the Defendants in Error, 3.
88. Reply Brief on Behalf of the Petitioners, 7.