

4274

AUSTILL AND AUSTILL

ATTORNEYS AT LAW

1004-1005 VAN ANTWERP BUILDING

MOBILE, ALABAMA

JERE AUSTILL
JERE AUSTILL, JR.

September 5, 1958

Clerk, Circuit Court
Baldwin County
Bay Minette, Alabama

Dear Sir:

Please find enclosed Bill of Complaint seeking sale of certain real property in your County for division, in Equity.

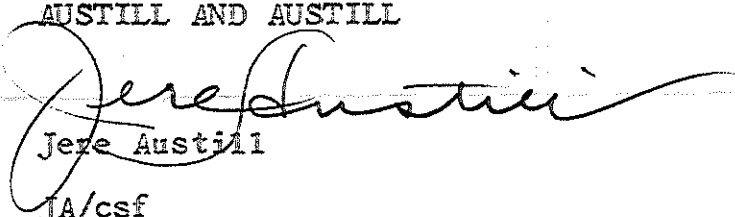
We enclose also ten (10) signed copies of the Bill for service upon the several defendants, all of whom reside in Mobile County, Alabama.

We will thank you to docket the case and issue these subpoenas for the ten (10) defendants as soon as you can conveniently attend to it.

If there are any court costs which must be paid now into your office, please advise and we will send a check at once to cover them.

Yours very truly,

AUSTILL AND AUSTILL



Jere Austill

JA/csf

Enc.

VELMA D. MOTHERSHED, : IN THE CIRCUIT COURT
 Complainant, : OF
 VS. : BALDWIN COUNTY, ALABAMA
 ERNEST R. MOTHERSHED, JAMES O. : IN EQUITY
 MOTHERSHED, LESTER DEVAN MOTHERSHED, :
 ORA MOTHERSHED, LILLIAN LEE, KATHLEEN : NUMBER: 4374
 RAMBO, EVA LOU DOGGETT, LUCILLE KENNON, :
 WALKER S. MOTHERSHED and CORA LEE RAMBO, :
 Respondents :

TO THE HONORABLE HERBERT HALL, JUDGE OF CIRCUIT COURT,
 BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY.

ANSWER

Now come ERNEST R. MOTHERSHED, JAMES O. MOTHERSHED, LESTER
 DEVAN MOTHERSHED, ORA MOTHERSHED, LILLIAN LEE, KATHLEEN RAMBO, EVA LOU
 DOGGETT, LUCILLE KENNON, and CORA LEE RAMBO, by and through their
 Attorney, George J. Moore, and for answer to the Original Bill of Complain
 in said cause, show unto the Court as follows:

1. These Respondents admit the allegations of Paragraph
 One of the Complaint.
2. These Respondents admit the allegations of Paragraph
 Two of the Complaint.
3. These Respondents neither admit nor deny the allegations
 of Paragraph Three of the Complaint, and demand strict proof thereof.
4. These Respondents neither admit nor deny the allegations
 of Paragraph Four of the Complaint, and demand strict proof thereof.
5. These Respondents neither admit nor deny the allegations
 of Paragraph Five of the Complaint, and demand strict proof thereof.
6. These Respondents neither admit nor deny the allegations
 of Paragraph Six of the Complaint, and demand strict proof thereof.
7. These Respondents deny the allegations of Paragraph
 Seven of the Complaint and demand strict proof thereof.
8. For further answer, these Respondents show that they
 have, prior to the filing of the complaint by Complainant, agreed with
 Complainant through her Attorneys that the reasonable market value of
 the lands involved and owned jointly by the parties hereto in Baldwin

County was not in excess of \$4,250.00; that a prospective purchaser for said lands at said purchase price was available prior to the filing of said complaint, and that these Respondents agreed to such sale, but that Complainant, with whom said purchaser negotiated failed and refused to go through with the private sale to such purchaser; that now, because Complainant has filed her bill of complaint herein, these Respondents stand to realize less than the reasonable market value of their interest should any of the costs of these proceedings be taxed against them; that in equity and good conscience these Respondents should not be required to accept as their respective shares any amount less than they could have realized, had the Complainant but cooperated and gone through with said private sale foresaid; and that before Complainant be allowed a pro-ration of the costs of these proceedings or payment of attorney fees for her Solicitors from the proceeds of any sale of said lands by this Honorable Court, the said such sale should bring a purchase price and selling price of an amount in excess of said \$4,250.00, sufficient to pay for such costs.

9. These Respondents further show that they are informed and believe that they therefore, based on such information and belief, now allege that said lands are indeed capable of an equitable partition in kind; and that before any order of sale for division be allowed, that the equities and rights of the parties hereto can be best served by a bona fide effort being made toward such equitable partition, to which all of these Respondents herewith subscribe their willingness to participate, and that such an equitable partition should be determined by the Court, if such be possible.

10. These Respondents further show that, as inferred in Paragraph Five of the complaint, they are the surviving children of Royal Thomas Mothershed, Deceased, through whom they derive their interest in said lands; that the administration of the estate of their said deceased father is still pending in the Probate Court of Mobile County, Alabama, and has been pending since October, 1956,

and continues to remain pending therein because of the dilatory and delaying practices of Complainant, all of which are costly to these Respondents, who, because of such practices, have already been required to pay to the Solicitors for Complainant the sum of \$1,125.00 attorney fees in another suit for sale for division of lands in Mobile County, also brought by the Complainant herein, but in the ostensible name of her son, Walker B. Mothershed, whom she now names a Respondent in these proceedings; that these Respondents still must share and stand their pro-rata share of the costs of said Administration proceedings, including another Solicitor Fee to Complainant's Solicitors.

11. These Respondents aver that, so far as they are concerned, there is absolutely no need for a public and forced sale for division; that they are ready, willing and able to convey their interests in said lands to any buyer at a private sale, at which sale they aver there would be realized more money to each for his or her share than at a public, forced sale; that in equity and good conscience, they should be given the opportunity to either arrange for the outright purchase of Complainant's interest therein or to effect a sale to a stranger of all interests at a private sale, but without any costs of court or Attorney fees being taxed against said lands or the purchase moneys realized from such private sale.

WHEREFORE, the premises considered, these Respondents pray that this, their answer, be considered in the nature of a Cross Bill of Complaint, and that Complainant be made a Cross-Respondent hereto and be required to appear and plead, answer or demur hereto within the time required by law and the rules and practices of this Honorable Court.

PRAYER FOR RELIEF

These Respondents now further pray that, upon a final hearing of these proceedings, that the Court deny the Complainants Prayer for Relief both as to an order of sale of said lands and as to an award of Attorney Fees for her Solicitors; and

They further pray that the Court decree that a partition in kind be had of said lands, awarding to each party his equitable share by such commissioners as may be appointed by the Court; and in the al-

ternative, should such partition be considered impossible or impracticable by the Court, then that these Respondents be given a reasonable time in which to arrange for a private sale of said lands; and

They further pray that Equity be had and the premises considered, they now pray for all such other, different or further relief to which they might be entitled; and they will ever pray; etc.



George J. Moore
819 Annex First National Bank Bldg.
Mobile, Alabama
Appearing for Respondents Ernest
R. Mothershed, etc.

Filed: 10-8-58.

Beice J. Huck Register.

(4)

VELMA D. MOTHERSHED,
Complainant,

-versus-

ERNEST R. MOTHERSHED, JAMES O.
MOTHERSHED, LESTER DeVAN MOTHERSHED,
ORA MOTHERSHED, LILLIAN LEE, KATHLEEN
RAMBO, EVA LOU DOGGETT, LUCILLE KENNON,
WALKER B. MOTHERSHED and CORA LEE RAMBO,
Respondents.

IN THE CIRCUIT COURT
OF
BALDWIN COUNTY, ALABAMA
IN EQUITY
NUMBER:

TO THE HONORABLE HEBERT HALL, JUDGE OF CIRCUIT COURT,
BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY.

Comes VELMA D. MOTHERSHED and files this Bill of Complaint against ERNEST R. MOTHERSHED, JAMES O. MOTHERSHED, LESTER DeVAN MOTHERSHED, ORA MOTHERSHED, LILLIAN LEE, KATHLEEN RAMBO, EVA LOU DOGGETT, LUCILLE KENNON, WALKER B. MOTHERSHED and CORA LEE RAMBO and respectfully alleges and shows as follows:

ONE

That the Complainant is over twenty-one years of age and all of the Defendants are over twenty-one years of age.

TWO

That the Complainant and the Defendants all reside in Mobile County, Alabama.

THREE

Complainant now alleges and shows that she and the Defendants jointly own certain real property located in Baldwin County, Alabama, particularly described as follows, viz:

East Half of the Southwest Quarter of the Southwest Quarter and the West Half of the Southeast Quarter of the Southwest Quarter of Section 14, Township 1 South, Range 4 West.

FOUR

Complainant now alleges that said real property was acquired by her and her husband, ROYAL THOMAS MOTHERSHED, with equal interest, as shown by deed recorded in the Probate Court of Baldwin County, Alabama.

FIVE

Complainant now shows that her husband, ROYAL THOMAS MOTHERSHED, died intestate in Mobile County, Alabama, leaving as his sole heirs at law and next of kin this complainant, as his widow and ten (10) children, namely:

1. WALKER B. MOTHERSHED, who resides in Mobile County, Alabama;
2. JAMES O. MOTHERSHED, whose address is 58 First Street, Prichard, Alabama;
3. ERNEST R. MOTHERSHED, whose address is 94 8th Avenue, Chickasaw, Alabama;
4. LESTER DeVAN MOTHERSHED, whose address is 124 2nd Avenue Prichard, Alabama;
5. ORA MOTHERSHED, whose address is 166 Marshall Court, Prichard, Alabama;
6. LILLIAN LEE, whose address is 61 North Boulevard, Prichard Alabama;
7. KATHLEEN RAMBO, whose address is 72 4th Avenue, Prichard, Alabama;
8. CORA LEE RAMBO, whose address is 59 North Boulevard, Prichard, Alabama;
9. EVA LOU DOGGETT, whose address is EIGHT MILE, ALABAMA;
10. LUCILLE KENNON, whose address is Plantation Road, Theodore Alabama;

SIX

Complainant, therefore, alleges that she owns an undivided one-half (1/2) interest in said real property and that each of said ten (10) children own an undivided one-twentieth interest in said real property.

SEVEN

Complainant further alleges that said real property has a residence thereon and a portion of the land is clear and has been cultivated and that on account of the nature of said land and the location of said improvements it is incapable of an equitable partition and division among those who are now vested with the title thereto.

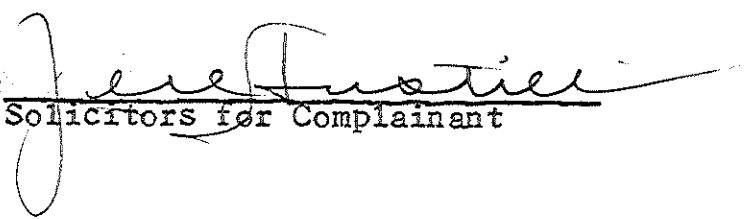
PRAYER FOR PROCESS

Complainant, therefore, prays that this Honorable Court will be pleased to issue its process of subpoena to the said Walker B. Mothershed, James O. Mothershed, ERNEST R. MOTHERSHED, Lester DeVan Mothershed, Ora Mothershed, Lillian Lee, Kathleen Rambo, Cora Lee Rambo, Eva Lou Doggett and Lucille Kennon and that they be required to appear in this cause and plead thereto as required by the rules and practice of this Honorable Court.

PRAYER FOR RELIEF

Complainant prays upon consideration of the premises that this Honorable Court will be pleased to enter a decree fixing and determining the interest of your complainant and of each of the defendants in said real property, and directing that said land might be sold for distribution of the proceeds among those entitled to receive the same; and complainant further prays that this Honorable Court will be pleased to fix and determine an attorneys fee to be paid Messrs. Austill and Austill, as her solicitors, which shall be paid out of the proceeds arising out of the sale of said real property and complainant further prays that this Honorable Court will direct the payment of all costs incurred in this proceeding and direct the distribution of the balance among those entitled to receive the same, and for such other, further and different relief as she is entitled to receive in the premises.

AUSTILL AND AUSTILL

BY: 
Solicitors for Complainant

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama,
Baldwin County.



Circuit Court, Baldwin County

No. 4374

..... TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon ERNEST R. MOTHERSHED, JAMES O. MOTHERSHED
LESTER DeVAN MOTHERSHED, ORA MOTHERSHED, LILLIAN LEE, KATHLEEN RAMBO
EVA LOU DOGGETT, LUCILLE KENNON, WALKER D. MOTHERSHED, and CORA
LEE RAMBO

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against.....

..... ERNEST R. MOTHERSHED ET ALS, Defendant.....

by VEIMA D. MOTHERSHED

....., Plaintiff.....

Witness my hand this * 8th day of September 1958

213A

Virginia Newsham, Clerk

1202 Co
1209
1240
No. 4274

176

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The State of Alabama
Baldwin County

CIRCUIT COURT

XXXXXX.

VEIMA D. MOTHERSHED
Plaintiffs

vs.

ERNEST R. MOTHERSHED ET ALS

Defendants

Summons and Complaint

Filed September 8 19 58

Alice J. Duck Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

Sept. 9th 19 58

Ray D. Bridges, Sheriff
I have executed this summons

this 10th Sept 19 58

by leaving a copy with

- Walter B. Mothershed - 10th
- James O. Mothershed - 9th
- Ernest R. Mothershed - 10th
- Lester V. Mothershed - 9th
- Gra Mothershed - 10th
- Kellian Lee - 9th
- Kathleen Kunko - 9th
- Cora Lee Kunko - 9th
- Gra Lou Doggett - 9th
- Lucille Kunko - 10th

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Ray D. Bridges Sheriff

L. Smith Deputy Sheriff

J. C. Ardis