

655

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Your Orator, Herman C. Nelson, as Trustee, presents this Bill of Complaint against W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and the Stapleton Insurance and Realty Corporation, and thereupon your Orator complains and shows unto the Court and your Honor as follows:

1. Your Orator is over twenty-one years of age and a resident of the City of Chicago, in the State of Illinois, and is trustee as provided in that certain instrument dated January 2, 1938, and recorded in Deed Book Number 67 N. S. at page 599, Baldwin County Records, a true copy of which is hereto attached, marked Exhibit "A" and by reference made a part hereof as though fully incorporated herein. W. R. Stuart, W. D. Stapleton, Randolph McGowan and Sullivan Sanks are each over twenty-one years of age and each reside in Baldwin County, Alabama. The Stapleton Insurance and Realty Corporation is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business at Bay Minette, in Baldwin County, Alabama.

2. Your Orator owns and is in the peaceable possession of the following described real property and the timber thereon, situated in Baldwin County, Alabama, to-wit:

North Half of Northeast Quarter of Southwest Quarter;
Southeast Quarter of Northeast Quarter of Southwest Quarter;
Southeast Quarter except West Half of Southwest Quarter of Southeast Quarter, Section Eleven (11), Township One (1) South Range Four (4) East;
Southwest Quarter of Section Twelve (12), Township One (1) South Range Four (4) East;
Northeast Quarter, except Northwest Quarter of Northwest Quarter of Northeast Quarter, Section Fourteen (14), Township One (1) South Range Four (4) East;
Southeast Quarter of Northwest Quarter;
West Half of Southwest Quarter of Northeast Quarter of Section Twenty-two (22), Township One (1) South Range Four (4) East.

3. The Respondents claim or are reputed to claim some right, title or interest in, claim or encumbrance upon the aforesaid lands, or some part thereof, no suit is pending to enforce or test the validity of such right, title, or interest in, claim or encumbrance

upon the said property, or any part thereof, and your Orator calls upon the said Respondents to set forth and specify what right, title, or interest in, claim or encumbrance upon the said property, or any part thereof, that each of them has or claims to have, and how and by what instrument or instruments the same is derived or created.

4. Your Orator further shows unto your Honor that he is the owner of all of the aforesaid property together with the timber thereon, described in paragraph 2 hereof, and is in the peaceable possession of same, claiming to own the same; that your Orator is informed and believes, and upon such information and belief alleges that the lands described in paragraph 2 hereof were, on the 17th day of June, 1937, sold for taxes under an assessment to Cliff Stevenson for the year of 1936; that the right, title, interest in, claim or encumbrance of some or all of the aforesaid Respondents is derived through the aforesaid sale of said lands for taxes, they, or some of them having purchased the State's Certificate covering said sale, had a deed made thereon and thereby acquired the right, title and interest of the State in and to the said lands under the aforesaid tax sale.

5. Your Orator further alleges that the attempted sale of the aforesaid lands for taxes is void; that the Court ordering the sale of the said lands had no jurisdiction of the said cause, and that the decree ordering the said sale is void and the sale thereunder is void, all of which appears from the assessment, the records of the said Court ordering the said lands sold, and in the record of the proceedings of the said sale.

6. Your Orator further alleges that on to-wit, the 15th day of July, 1940, acting through his agent, P. E. Teter, he went to the Respondent, W. R. Stuart, he being the party to whom the tax deed conveying the said property was made, and tendered and offered to pay to him in cash the entire amount that he paid for the said tax certificate and tax deed to the above described property, together with interest thereon and in addition thereto, a reasonable amount for profit; that this said tender was refused by the said W. R. Stuart,

and that thereafter he, the said Stuart, was notified by your Orator's said agent not to trespass upon or attempt to trespass upon the said lands or any part thereof, but regardless of the said tender made to the said Stuart, and of the said warning not to trespass upon the said property, the said Respondents or their agents, servants or employees did on the 2nd day of August, 1940, trespass on the said lands and cut down timber growing thereon, are now on the said property cutting down timber thereon for the purpose of removing the said timber from the said property, and have notified your Orator's said agent that they will cut and remove all of the timber from the said property. The timber on the said property constitutes the principal value thereof and the cutting thereof will irreparably injure your Orator.

7. Your Orator further alleges that the trespass on and the cutting of timber from the said lands by the Respondents or their agents, servants or employees, have greatly damaged your Orator and have greatly reduced the value of the said property, and that it is necessary that the Respondents and each of them be enjoined from cutting or removing timber from all or any part of the said lands in order that your Orator may be protected in the premises.

8. Your Orator offers to do equity and pay the amount due for taxes, fees and costs on the said property together with any other legal charges.

PRAYER FOR PROCESS.

Your Orator prays that the Court will take jurisdiction of the cause made by this Bill of Complaint and that due notice thereof be given to the Respondents, W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Senks and Stapleton Insurance and Realty Corporation, in the form and manner prescribed by law, requiring them to plead, answer or demur to the same within the time and under the pains and penalties prescribed by law, and the practice of this honorable Court.

PRAYER FOR RELIEF.

Your Orator prays that upon a final hearing of the cause

made by this Bill of Complaint this Honorable Court will grant unto him the following relief:

1. That it will make and enter a decree adjudging and decreeing that the said Respondents and each of them have no right, title, interest in, claim or encumbrance upon the said lands, or any part thereof.

2. That by proper proceedings will ascertain and fix the amount of damages caused to your Orator by the trespass of the Respondents, their agents, servants or employees on the said property and render a proper decree in your Orator's favor therefor.

3. That the Respondents be enjoined and restrained from trespassing on the said property or any part thereof.

4. Your Orator further prays that pending a final hearing and determination of the issues of this suit, that there be issued a temporary writ of injunction or restraining order according to the rules and practice of this Honorable Court, restraining and enjoining the Respondents, W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and Stapleton Insurance and Realty Corporation, and each of them from cutting, removing, selling or in any manner disposing of all or any part of the timber on all or any part of the said lands and from doing anything or taking any action which would disturb the status quo of the said property.

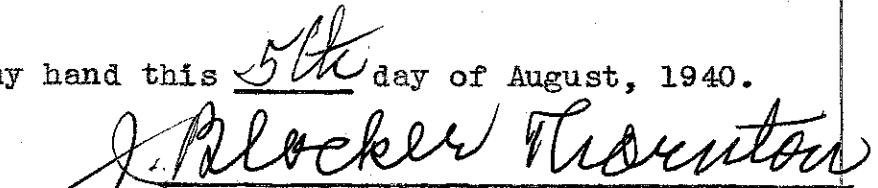
5. Your Orator prays for such other, further and general relief as he may be equitably entitled to the premises considered.


Solicitor for Complainant.

TO R. S. DUCK, REGISTER OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

On Complainant entering into bond in the sum of \$150.⁰⁰ with sufficient surety, to be approved by you as Register, conditioned as required by law, let an injunction issue as prayed for in the foregoing Bill of Complaint.

Given under my hand this 5th day of August, 1940.


Judge of the Circuit Court of Mobile County, Alabama.

AFFIDAVIT.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, within and for said County in said State, personally appeared P. E. Teter, who, after being by me first duly and legally sworn, deposes and says: That he is over twenty-one years of age, a resident of Baldwin County, Alabama, and is the agent of Herman C. Nelson, as Trustee, in Baldwin County, Alabama; that the said Herman C. Nelson is a non-resident of the State of Alabama and is now out of the said State. Affiant further deposes and says that he has read over the foregoing Bill of Complaint; that he has personal knowledge of the matters and facts alleged therein and that the same are true.



Sworn to and subscribed before me
on this the 5th day of August, 1940.



Notary Public, Baldwin County, Alabama.

EXHIBIT "A"

THIS INDENTURE WITNESSETH, that the grantor, RHUEA BROWN, a spinster, of the county of Cook and State of Illinois for and in consideration of One (1) Dollar and other good and valuable considerations in hand paid,

Conveys and Quit Claims unto HERMAN C. NELSON, Divorced and not remarried, of Chicago, Illinois, as Trustee under the provisions of a trust agreement dated the Second day of January 1938 and known as Trust Number 10 the following described real estate in the County of Baldwin and State of Alabama to-wit:

North Half of Northeast Quarter of the Southwest Quarter;
Southeast Quarter of Northeast Quarter of Southwest Quarter; Southeast Quarter except West Half of Southwest Quarter of Southeast Quarter Section Eleven (11), Township One (1) South, Range Four (4) East, containing 170 acres. Southwest Quarter Section Twelve (12), Township One (1) South Range Four (4) East, containing 160 acres. Northeast Quarter except Northwest Quarter of Northwest Quarter of Northeast Quarter Section Fourteen (14), Township One (1) South, Range Four (4) East, containing 150 acres, Southeast Quarter of Northwest Quarter and West Half of Southwest Quarter of Northeast Quarter Section Twenty-two (22), Township One (1) South, Range Four (4) East, containing 60 acres. Intending to describe and cover the same lands as those conveyed by Grant W. Miller, a single man, to Charles A. Body by deed dated February 25th, 1933, and recorded in Deed Book No. 53 N. S. at Page 504, Baldwin County Records. This trust is located in the City of Chicago, Illinois.

TO HAVE AND TO HOLD the said premises with the appurtenances upon the trusts and for the uses and purposes herein set forth:

The interest of each and every beneficiary hereunder and of all persons claiming under them, is hereby declared to be personal property and to be in the earnings, avails and proceeds arising from the disposition of the premises; the intention hereof being to vest in the said HERMAN C. NELSON the entire legal and equitable title in fee, in and to all of the premises above described.

HERMAN C. NELSON,
as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

Come the Respondents, in the above styled cause, and without waiving their motion filed in this cause on this day to dissolve the injunction heretofore granted in this cause on the following grounds:

1. That the said bill filed in the Circuit Court of Baldwin County, Alabama, in Equity, on August 6th, 1940, the basis of the injunction, is without equity.
2. That it affirmatively appears from the Bill of Complaint in this cause, the basis of said injunction, that the Respondents are in the actual possession of the lands therein described and being the lands involved in this suit.
3. That it affirmatively appears from said Bill of Complaint that the Respondent, W. R. Stuart, is the owner of and in the actual possession of the lands described in said Bill of Complaint, and being the lands involved herein.
4. For aught that appears from the Bill of Complaint in this cause, the Complainant has a full, complete and adequate remedy at law, but insisting thereon, further move the Court to dissolve the injunction heretofore issued in the aforesaid cause on the 6th day of August, 1940, enjoining the Respondents from cutting, removing, selling or in any manner disposing of all or any part of the timber on all or any part of the following described property in Baldwin County, Alabama, to-wit:

North half of Northeast quarter of Southwest quarter; Southeast quarter of Northeast quarter of Southwest quarter; Southeast quarter, except West half of Southwest quarter of Southeast quarter, Section 11, Township 1 South, Range 4 East; Southwest quarter of Section 12, Township 1 South, Range 4 East;
Northeast quarter, except Northwest quarter of Northwest quarter of Northeast quarter, Section 14, Township 1 South, Range 4 East;
Southeast quarter of Northwest quarter; West half of Southwest quarter of Northeast quarter of Section 22, Township 1 South, Range 4 East,

and from doing anything or taking any action which would disturb the status quo of the said property pending the determination of the issue set up in this suit, and for ground of such dissolution submit the following additional grounds:

1. Upon the sworn answer of the Respondent, W. R. Stuart, filed in this cause on the 8th day of August, 1940.

2. Affidavits in support of the Respondent's answer filed in this cause on the 8th day of August, 1940.

W. R. Stuart

Randolph McMoran

[Signature]
Respondents.

BEEBE & HALL,

By: [Signature]
Solicitors for Respondents.

EXHIBIT "A"

THIS INDENTURE WITNESSETH, that the grantor, RHUEA BROWN, a spinster, of the county of Cook and State of Illinois for and in consideration of One (1) Dollar and other good and valuable considerations in hand paid,

Conveys and Quit Claims unto HERMAN C. NELSON, Divorced and not remarried, of Chicago, Illinois, as Trustee under the provisions of a trust agreement dated the Second day of January 1938 and known as Trust Number 10 the following described real estate in the County of Baldwin and State of Alabama to-wit:

North Half of Northeast Quarter of the Southwest Quarter;
Southeast Quarter of Northeast Quarter of Southwest Quarter; Southeast Quarter except West Half of Southwest Quarter of Southeast Quarter Section Eleven (11), Township One (1) South, Range Four (4) East, containing 170 acres. Southwest Quarter Section Twelve (12), Township One (1) South Range Four (4) East, containing 160 acres. Northeast Quarter except Northwest Quarter of Northwest Quarter of Northeast Quarter Section Fourteen (14), Township One (1) South, Range Four (4) East, containing 150 acres, Southeast Quarter of Northwest Quarter and West Half of Southwest Quarter of Northeast Quarter Section Twenty-two (22), Township One (1) South, Range Four (4) East, containing 60 acres. Intending to describe and cover the same lands as those conveyed by Grant W. Miller, a single man, to Charles A. Body by deed dated February 25th, 1933, and recorded in Deed Book No. 53 N. S. at Page 504, Baldwin County Records. This trust is located in the City of Chicago, Illinois.

TO HAVE AND TO HOLD the said premises with the appurtenances upon the trusts and for the uses and purposes herein set forth:

The interest of each and every beneficiary hereunder and of all persons claiming under them, is hereby declared to be personal property and to be in the earnings, avails and proceeds arising from the disposition of the premises; the intention hereof being to vest in the said HERMAN C. NELSON the entire legal and equitable title in fee, in and to all of the premises above described.

And the said grantor hereby expressly waives and releases any and all right of benefit under and by virtue of any and all statutes of the State of Alabama providing for the exemption of homesteads from sale on execution or otherwise.

In Witness Whereof, the grantor aforesaid has hereunto set her hand and seal this second day of January, 1938.

RHUEA BROWN Seal.

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Wm. T. Halvorsen, Notary Public, in and for said County in the State aforesaid, do hereby certify that RHUEA BROWN

personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and my notarial Seal this Second day of January, 1938.

Wm. T. HALVORSEN
Notary Public

Seal

Filed February 14, 1939.

Recorded Deed Book 67N.S. Page 599.

RECORDED

ADDITION MOTION TO DISSOLVE
INUNCTION:

HERMAN C. NELSON, as
Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

*Filed August 8 1940
R. S. Duchs, Register*

HERMAN C. NELSON,
as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY,

NO. 655.

This cause is submitted on the Motion of the Respondents to dissolve the injunction heretofore granted in this cause on the ground that the bill is without equity. We are, therefore, limiting our argument to the sole and only question of this motion.

The original Bill, in the 2nd paragraph, recites: "Your Orator owns and is in the peaceable possession of the following described real property and the timber thereon, situated in Baldwin County, Alabama, to-wit: - - - - -"

The Bill also recites, in paragraph 4: " - - - - that your Orator is informed and believes, and upon such information and belief alleges that the lands described in paragraph 2 hereof were, on the 17th day of June, 1937, sold for taxes under an assessment to Cliff Stevenson for the year of 1936; that the right, title, interest in, claim or encumbrance of some or all of the aforesaid Respondents is derived through the aforesaid sale of said lands for taxes, they, or some of them having purchased the State's Certificate covering said sale, had a deed made thereon and thereby acquired the right, title, and interest of the State in and to the said lands under the aforesaid tax sale.

The Bill also recites, in paragraph 6: " - - - - the said Respondents or their agents, servants or employees did on the 2nd day of August, 1940, trespass on the said lands and cut down timber growing thereon, are now on the said property

cutting down timber thereon for the purpose of removing the said timber from the said property, and have notified your Orator's said agent that they will cut and remove all of the timber from the said property. - - - - - "

The Bill, in its Prayer, is to the effect that the Court make and enter a decree adjudging and decreeing that the said Respondents and each of them have no right, title, interest in, claim or encumbrance upon the said lands, or any part thereof.

The Bill of Complaint is in form and in fact a plain statutory bill to quiet title.

We submit that the bill affirmatively alleging that the Respondent is in the actual possession of said land robbed it of all equity.

The bill being one to quiet title, equity has no jurisdiction when it is shown that the Complainant is not in possession. *Frazier vs. Espalla, et al.*, 119 So. 209; *Drum & Ezekiel, et al. vs. Bryan, et al.*, 69 So., 483.

A bill in equity to remove a cloud from title to land cannot be maintained unless Plaintiff has actual possession. *Drum & Ezekiel et al. vs. Bryan, et al.*, 40 So., 131.

The Complainant in his bill alleges that he has only legal title, and also alleges that the Respondents are in possession under a tax title.

"Bill in equity to remove cloud on title cannot be brought by party asserting mere legal title, unless he is in possession."

Frazier vs. Espalla, et al., 119 So., 209.

The mere fact that the Complainant may state that he has warned the Respondents against trespassing, yet admitting that the Respondents are in possession, is not sufficient to give the bill equity.

"Equity will not enjoin a trespass to realty when Plaintiff's title is in dispute, and has not been established at law. A Court of equity will not presume to determine the title to the property upon affidavits, and will not permit a temporary injunction to be granted which would operate as an action of ejectment. Underlying the entire jurisdiction of equity by injunction against the commission of trespass is that, where adequate relief may be had in the usual course of procedure of law, equity will not interpose by the extraordinary remedy of injunction."

Kellar, et al. vs. Bullington, 14 So., 466.

"To warrant the interference of equity in restraint of trespass two conditions must coexist: First, complainant's title must be established; and, second, the injury complained of must be irreparable in its nature. And to come within the rule the injury must be of such a nature as not to be susceptible of adequate pecuniary compensation in damages."

Kellar, et al. vs. Bullington, 14 So., 466.

"Injunction will not lie in favor of a complainant out of possession to restrain the removal of timber from land on which the Defendants are in possession under a claim of ownership."

Kellar, et al. vs. Bullington, 14 So., 466.

The Respondents being in the actual possession of land for the purpose of removing timber, Complainant's remedy at law was adequate and complete; a suit for injunction cannot take the place of an action in ejectment, thus invoking the jurisdiction of the court of chancery to decide in which party title to realty resides.

Irwin vs. Shoemaker, et al., 88 So., 129.

If the Court is of the opinion that a temporary injunction is not necessary to do justice between the parties, court will ordinarily refuse to retain temporary injunction. Irwin Fishing & Hunting Club vs. Cobb, 179 So., 183.

We, therefore, submit, without arguing the question further, that the bill of the complainant is without equity and should be dismissed, and along with it the injunction dissolved.

The suit, the basis of the injunction, is without equity. There is nothing

to warrant the rendition of the temporary injunction, and hence it should be, at this time, dismissed.

We wish to expressly call the attention of the Court to the Bill and its form, and the fact that the prayer therein is limited to, we might say, an adjudication that the Respondents have no title to the property in question. The fact that the bill prays for damages for a trespass and also for an injunction does not change the bill in its finality from that of a straight statutory bill to quiet title.

The equity of a case turns upon its particular facts. The Complainant, in his bill, in effect admits that the Respondent, while he alleges he is a trespasser, is in possession under a tax deed. The admission of possession under the tax deed of course protects the Respondent against being a trespasser. The instant case is easily differentiated from the case cited by Mr. Blackburn, *Acker vs. Green*, in that in that case the Respondent had no title and claimed no title and was a mere trespasser, while in this case the bill alleges that the Respondent had title.

We, therefore, submit that the injunction should be dissolved and the complaint dismissed.

BEEBE & HALL,

By: *W. S. Beebe*
Solicitors for Respondents.

Copy of the foregoing brief handed to Hon. J. B. Blackburn, Solicitor for the Complainant, this 20th day of August, 1940.

BEEBE & HALL,

By: *W. S. Beebe*
Solicitors for Respondents.

this time, dismissed.

We wish to expressly call the attention of the Court to the Bill and its form, and the fact that the prayer therein is limited to, we might say, an adjudication that the Respondents have no title to the property in question. The fact that the bill prays for damages for a trespass and also for an injunction does not change the bill in its finality from that of a straight statutory bill to quiet title.

The equity of a case turns upon its particular facts. The Complainant, in his bill, in effect admits that the Respondent, while he alleges he is a trespasser, is in possession under a tax deed. The admission of possession under the tax deed of course protects the Respondent against being a trespasser. The instant case is easily differentiated from the case cited by Mr. Blackburn, *Walker vs. Green*, in that in that case the Respondent had no title and claimed none, and was a mere trespasser, while in this case the bill alleges that the Respondent had title.

We, therefore, submit that the injunction should be dissolved and the complaint dismissed.

1940
W. B. Blackburn
Attorney for Respondents

BEER & HALL,

By: *W. B. Blackburn*
 Solicitors for Respondents.

Copy of the foregoing brief handed to Hon. J. B. Blackburn, Solicitor for

the Complainant, this 20th day of August, 1940.

BEER & HALL,

By: *W. B. Blackburn*
 Solicitors for Respondents.

HERMAN C. NELSON,
as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

NO. 655.

RESPONDENTS' REPLY TO COMPLAINANT'S BRIEF ON MOTION TO
DISSOLVE INJUNCTION:

The able Solicitor for the Complainant has based his argument on certain cases that seem to meet his idea of the existing facts in the instant case, however, a close examination of the authorities cited will show that each case he has used the Respondent was a clear trespasser and there was no allegation that he held any title. If the Complainant in the instant case had merely recited that he was the owner of the land and timber in question, and that the Respondent was a trespasser, there is no doubt but that the motion to dissolve the injunction filed by the Respondents should be denied, however, the Complainant, for some reason, has seen fit in addition to alleging that he is the owner and in the peaceable possession of said property, that the Respondent is also the owner thereof, under a tax deed, and is in the actual possession thereof, the allegation that the tax deed is void being a mere conclusion of the pleader.

The Complainant having drafted the Bill of Complaint, it is to be weighed most strongly against him, and where there is a direct conflict between the two paragraphs in the complaint, the one against the interest of the pleader is to be given the greater force. Then too, if we are to consider the Bill, and the Complainant should attempt to prove his bill, the first thing that he would have to do would

be to prove that he was the owner of the land and in the peaceable possession thereof, which he has himself expressly denied by the allegations of his complaint.

The Complainant also insists that although his bill may not be well founded as a straight bill to quiet title, yet by reason of the fact that he has prayed for additional relief gives the bill equity. We submit that the Court does not look to the prayer of a bill to determine whether or not it has equity, but looks only to the allegations contained therein. If we are to follow the Complainant's reasoning, then it would matter not what the allegation of a bill might be and whether or not it contained equity, yet by reason of the fact that the Complainant inserted a general prayer for relief, this of itself, disregarding all the allegations of the complaint, would give the entire bill equity. We do not believe this to be the law.

The Complainant also mentions the fact that the proceeding of ~~a~~ filing a motion to dismiss the bill for want of equity has long since been abandoned, however, in considering the bill, if it appears on the face that it is without equity, then, most assuredly, the injunction should be dissolved, and, in effect, this automatically carries with it the bill in its entirety, and in addition to this, the motion does carry with it the fact that the bill contains no equity, and this, if sustained, leaves the bill, as a whole, hanging in suspense, and it would automatically drop.

The Complainant states that he is mighty glad that we have mentioned the case of Irwin Fishing & Hunting Club vs. Cobb. A study of this case will show why the Supreme Court ruled as it did, in that as between the Complainant and the Respondent the timber in question was ornamental trees and shades and of an unusual intrinsic value to the Plaintiff, while to the Respondent they had only a commercial value.

The Complainant, we submit, as we cited in our first brief, is attempting to have this Court determine his title by means of a proceeding by way of injunction, which the Courts of our State have repeatedly held could not be done. A proceeding by way of injunction is not a proper way to try out a title. The Courts have repeatedly held that the proper way to determine title is by ejectment.

We again respectfully submit that the injunction heretofore granted should be dissolved.

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Respectfully submitted,

BEEBE & HALL,

By: *Wm Hall*

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OFFICE OF THE CLERK
COURT OF COMMON PLEAS
COLUMBUS, OHIO

The complaint, we submit, as we cited in our first brief, is attempt-
 ing to have this Court determine his title by means of a proceeding by way of
 injunction, which the Courts of our State have repeatedly held could not be done.
 A proceeding by way of injunction is not a proper way to try out a title. The
 Courts have repeatedly held that the proper way to determine title is by eject-
 ment.

We again respectfully submit that the injunction heretofore granted
 should be dissolved.

Respectfully submitted,

BERBE & HALL,

By: *Wm. W. Berbe*

DEPT. OF REVISION

*Filed August 21, 1948
 R.S. D. Smith, Register*

HERMAN C. NELSON, as Trustee,
Complainant,

VS.

W. R. STUART, W. D. STAPLETON,
RANDOLPH MCGOWAN, SULLIVAN SANKS
AND THE STAPLETON INSURANCE AND
REALTY CORPORATION,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

STIPULATION.

The parties to this cause having agreed on a settlement hereof, in which settlement the Complainant has paid to the Respondents the sum of Two Hundred Ninety-five and 90/100 Dollars (\$295.90), the receipt whereof is hereby acknowledged, IT IS STIPULATED AND AGREED between the parties hereto, acting by and through their respective attorneys as follows:

1. That the said cause be immediately submitted to the Court for a Decree quieting Complainant's title to the property involved in this suit against each and all of the Respondents, who consent that such Decree be rendered, and that the said matter be submitted for Decree at any time and place without further notice to them.
2. That the Complainant be taxed with the court costs incurred in the said proceeding.

Executed in triplicate this 28th day of January, 1941.

HERMAN C. NELSON, as Trustee,
Complainant,

By J. T. Shackleton
As his Attorney

W. R. STUART, W. D. STAPLETON, RANDOLPH
MCGOWAN, SULLIVAN SANKS AND THE STAPLE-
TON INSURANCE AND REALTY CORPORATION,
Respondents,

By [Signature]
As their Attorney

HERMAN C. NELSON,
as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

TO HONORABLE P. E. TETER, As Agent of Herman C. Nelson, as Trustee,
AND
TO HONORABLE J. B. BLACKBURN, as Solicitor of Record for the Complainant.

NOTICE is hereby given that Motion will be made before Hon. F. W. Hare,
Judge of the Circuit Court of Baldwin County, Alabama, on the 19th day of
August, 1940, to dissolve the injunction issued in the above styled cause, against
the Respondents, W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks
and the Stapleton Insurance and Realty Corporation, upon the following grounds:

1. That the said bill filed in the Circuit Court of Baldwin County,
Alabama, in Equity, on August 6th, 1940, the basis of the injunction, is without
equity.
2. That it affirmatively appears from the Bill of Complaint in this cause,
the basis of the said injunction, that the Respondents are in the actual possession
of the lands therein described and being the lands involved in this suit.
3. That it affirmatively appears from said Bill of Complaint that the Re-
spondent, W. R. Stuart, is the owner of and in the actual possession of the lands des-
cribed in said Bill of Complaint, and being the lands involved herein.
4. That for aught that appears from the Bill of Complaint in this cause,
the Complainant has a full, complete and adequate remedy at law,
and upon the following additional grounds:
 1. Upon the sworn answer of the Respondent, W. R. Stuart, filed in this
cause on the 8th day of August, 1940.
 2. Affidavits in support of the Respondent's answer filed in this cause
on the 8th day of August, 1940.

W. R. Stuart
Randolph McGowan
W. D. Stapleton
Respondents.

BEEBE & HALL,
By: John Lee
Solicitors for Respondents.

HERMAN C. NELSON, as Trustee,

Complainant,

VS.

W. R. STUART, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER _____.

INJUNCTION BOND.

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS: That we, Herman C. Nelson, as Trustee, as Principal, and P. E. Teter and C. A. Thompson, as Sureties, are held and firmly bound unto W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and the Stapleton Insurance and Realty Corporation, in the sum of One Hundred Fifty Dollars (\$150.00), for the payment of which we hereby bind ourselves, our heirs, executors and administrators, jointly and severally.

Sealed with our seals and dated this 6th day of August, 1940.


The condition of the above obligation is such that whereas, the said Herman C. Nelson, as Trustee, has filed his Bill of Complaint in the Circuit Court of Baldwin County, Alabama, and has obtained thereon an order for the issuance of an injunction from the Honorable J. Blocker Thornton, a Judge of the Circuit Court of Mobile County, Alabama, to restrain and enjoin W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and the Stapleton Insurance and Realty Corporation from cutting, removing, selling, or in any manner disposing of all or any part of the timber on all or any part of the said lands described in the Bill of Complaint filed in this cause and from doing or taking any action which would disturb the status quo of the said property pending the determination of the issues set up in the said suit.

NOW THEREFORE, if the said Herman C. Nelson, as Trustee,

or his heirs, executors or administrators shall pay, or cause to be paid all damages and costs which any person may sustain by the suing out of the said injunction, if the same is dissolved, then this obligation shall be void, otherwise it shall remain in full force and effect.

HERMAN C. NELSON, as Trustee (SEAL)

By 
As his Agent.

 (SEAL)
W. A. Thompson (SEAL)

Taken and approved on this the
6th day of August, 1940.



Register.

RECORDED

NOTICE OF MOTION TO DISSOLVE
INJUNCTION:

HERMAN C. NELSON, as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

Filed August 9, 1940
R. S. Dancy, Register

Recorded in Sheriff's Office

this 8 day of Aug 1940

W. R. STUART, Sheriff

*Executed this by serving
a copy of notice of motion
to dissolve injunction on*

P. E. Teter as agent of Herman

C. Nelson, as Trustee August 8th 1940,

and serving a copy on

*J. B. Bice, known as Solicitor of
Alabama for the Complainant*

August 6th 1940.

W. R. Stuart Sheriff

By M. B. Hammett, Deputy Sheriff

Stipulation

*Filed January 28, 1941
R. S. Dred, Registrar*

HERMAN C. NELSON, as Trustee,

Plaintiff,

vs.

W. R. STUART, et als,

Defendants.

THE STATE OF ALABAMA
Baldwin County

IN EQUITY
Circuit Court of Baldwin County

This cause is submitted in behalf of Complainant upon the original Bill of Complaint, Temporary
Writ of Injunction or Restraining Order, Decree Denying Motion to
Dissolve Injunction and Stipulation consenting that a Final Decree
be rendered quieting Complainant's title against the Respondents,

and in behalf of Defendant upon Motion to Dissolve Injunction and sworn Answers

R.S. Duch

Register.

No. _____

The State of Alabama
BALDWIN COUNTY

IN EQUITY
Circuit Court of Baldwin County

VS.

NOTE OF TESTIMONY

Filed in Open Court this 28th

day of January 1941

R. S. Duch
REGISTER

BILL OF COMPLAINT.

HERMAN C. NELSON, as Trustee,
Complainant,

VS.

W. R. STUART, et al,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER _____.

Filed August 5, 1940
R. B. Stuart
Registrar

~~Executed this 4th day of August 1940
By presenting the within Bill of Complaint
of *W. R. Stuart* Sheriff
of Baldwin County, Alabama
in presence of *Ranleigh W. Johnson*
and *W. R. Stuart* Plaintiff and
W. R. Stuart Defendant
W. R. Stuart Sheriff
W. R. Stuart Sheriff
W. R. Stuart Sheriff
D. S.~~

*Executed this 6th day of August 1940 and further notice
is given
W. R. Stuart*

*Executed this 6th day of August 1940 by Vermon a copy of
within Bill of Complaint on Prudential, W. R. Stuart
and further notice
W. R. Stuart Sheriff
By M. B. McArthur Deputy Sheriff*

~~RECORDED~~

INJUNCTION BOND.

HERMAN C. NELSON, as Trustee,
Complainant,

VS.

W. R. STUART, et al,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER ____.

*Filed August 6, 1940
R.S. Dyer, Register*

The State of Alabama, }
BALDWIN COUNTY

CIRCUIT COURT. (Equity)

September Term, 194 *0*

Norman C. Nelson, Complainant
No. *655* vs.

*\$16¹⁵ repaid
by check 1469*

W. R. Stuart, et al., Respondent

BILL OF COSTS

REGISTER'S FEES	AMOUNT	SHERIFF'S FEES:	AMOUNT
Fees in Circuit Court—		Summoning on Bill, Each Defendant..... <i>4</i>	1.50
Docketing Cause, One fee only of.....	1.00	Executing Writ of Injunction, or Ne Exeat, each.....	1.50
Issuing Summons on Bill, each.....	.50*	Executing Subpoenas for Witnesses, each.....	.65
Issuing Copies Thereof, each.....	.40	Executing Writs of Possession, each.....	5.00
Entering Return of Same, each.....	.15	Executing Scire Facias or Notice, each.....	1.50
Orders of Publication to Non-Residents, each.....	1.00*	Taking and Approving Bonds, each.....	1.00
Filing Bill or Other Paper, each.....	.10	Impaneling Jury.....	.75
Copies of Same, Per 100 Words.....	.15	Collecting Execution for Costs Only, each.....	1.50
Entering Appearances, each.....	.25*	Sheriff's Commissions.....	
Issuing Writs of Injunction, Ne Exeat, each.....	1.50		
Issuing Copies Thereof, each.....	.50		
Entering Return of Same, each.....	.15		
Decrees Pro Confesso, each.....	1.00*		
Order Appointing Guardian Ad Litem, each.....	1.00*		
Issuing Commissions to Take Testimony, each.....	.50		
Taking Testimony, Per Day.....	1.50		
Taking Testimony, Per 100 words.....	.20		
Receiving and Filing Depositions, each pkg.,.....	.10		
Indorsing Depositions Published, each pkg.....	.10		
All Entries on Commission Docket, Each Cause.....	.50		
Entering Order Submitting Cases for Decree, each.....	.50		
Other Orders of Court, each.....	.25		
Noting Testimony on Hearing of Cause, each.....	.50		
Entering Decrees, of 500 Words or Less, each.....	.75		
Per 100 words over 500.....	.15		
Taking Accounts, etc., on Ref., per Day.....	3.00*		
Taking Testimony on Reference Relating to Trustee, etc., per 100 words.....	.15		
Reference and Reports, each.....	2.00*		
Reports of 500 Words or Less.....	2.50		
Per 100 Words over 500.....	.15		
Issuing Subpoenas for Witnesses, each.....	.25		
Issuing Witness Certificates, each.....	.25		
All Entries on Subpoena Docket, each Cause.....	.50		
Taking and Approving Bonds, each.....	1.00		
Making Complete Record, per 100 Words.....	.15		
Hearing, etc., Regarding Appointment of Re- ceiver or Trustee.....	3.00		
Settlements with Receiver or Trustee, each.....	3.00		
Examining Vouchers in Settlements, each.....	.10		
Examining Answers on Exceptions, each Answer.....	3.00		
Removal Disabilities on Non-Age.....			
Commissions on Sales.....			
Making Deeds to Property Sold, each.....	2.00		
Receiving and Paying Out Money Other Than That Arising from Sales.....			
Certificates or Affidavits, with Seal, each.....	.50		
Certificates or Affidavits without Seal, each.....	.25		
Issuing Scire Facias or other Notice, each.....	.50		
Other Orders of Register, except Cont., each.....	.50		
Entering Certificates of Supreme Court, each.....	.50		
Transcript for Supreme Court, per 100 words, each.....	.15		
Additional Copies, per 100 words.....	.05		
Appeal Bond, each.....	1.00		
Certificate of Appeal, each.....	.50		
Notice of Appeal, each.....	.50		
Report to State Board of Health, each case.....	.50		
Certificate of Judgment, each.....	.25		
Issuing Executions, each.....	.75		
Entering Returns Thereof, each.....	.15		
<i>Certified copies</i>	<i>2.00</i>		
Total Register's Fees	17.80		
		Total Sheriff's Fees	12.00
			<i>1.50</i>
		SUMMARY OF FEES, COSTS, AND JUDGMENT	
		Fees in Circuit Court—	
		Register's Fees.....	17.80
		Ex-Register's Fees.....	
		Sheriff's Fees.....	12.00
		Ex-Sheriff's Fees.....	
		Witness Fees.....	
		Commissioner's Fees.....	
		Guardian Ad Litem.....	
		Publisher's Fees.....	
		Solicitor's Fees.....	
		Court Reporter's Fees, Per Day or fraction thereof.....	5.00
		Trial Tax.....	3.00
		Fees and Costs in Inferior Court:	
		Clerk of Inferior Court Fees.....	
		Sheriff's Fees.....	
		Witness Fees.....	
		Total Fees and Costs in Inferior Court	32.80
		<i>recording Decree in books</i>	
		Total Fees and Costs.....	
		Judgment.....	
		Total Fees, Costs, and Judgment	105-
			33.85
			<i>50.00</i>
			<i>3.385</i>
			<i>16.00</i>

HERMAN C. NELSON,
as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

And now come the Respondents in the above styled cause, and for answer to the Complainant's Bill of Complaint and to each count thereof, separately and severally, say:

1. That they deny each and every allegation contained therein not herein expressly admitted and demand strict proof of the same.
2. They admit that the Complainant is over twenty-one years of age and a resident of the City of Chicago, in the State of Illinois, but deny that he is Trustee under a certain instrument dated January 2nd, 1938, and recorded in Deed Book No. 67 NS, at page 599, Baldwin County Records; they admit that the Respondents, W. R. Stuart, W. D. Stapleton, Randolph McGowan and Sullivan Sanks are each over twenty-one years of age and each reside in Baldwin County, Alabama, and that the Stapleton Insurance and Realty Corporation is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business in Bay Minette, Baldwin County, Alabama.
3. The Respondents deny that the Complainant is in the peaceable possession of the lands described in the said Bill of Complaint, or any part thereof, and the timber thereon, but, on the contrary, say that the Respondent, W. R. Stuart, is the owner and in the actual possession of all of said lands there described in Paragraph 2 of the original Bill of Complaint, claiming to own the same.
4. The Respondents admit that there is no suit pending to enforce or test the validity of the right, title, or interest in, claim or encumbrance upon the said property, or any part thereof, of the Respondents, other than this suit; that the Respondent, W. R. Stuart, is the owner and in the actual possession of said lands, having acquired the same by deed from G. W. Robertson, Judge of Probate of Baldwin County, Alabama, dated June 18th, 1940 and of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 71 NS, page 505; that a copy of said deed is hereto attached, marked Exhibit "A", and asked to be taken as a part hereof as though herein fully set out.

5. The Respondents deny that the Complainant is the owner of all or any part of the property described in the original Bill of Complaint, together with the timber thereon, and deny that he is in the peaceable possession of the same, claiming to own the same; they admit that said lands were sold on the 17th day of June, 1937, for taxes under an assessment to Cliff Stevenson, for the year 1936, and that on to-wit, June 18th, 1940, the Respondent, W. R. Stuart, secured a deed from G. W. Robertson, Judge of Probate of Baldwin County, Alabama, and immediately went into the actual possession of said lands and has remained until the present time, and is at the present time in the actual possession of said lands.

6. The Respondents deny that the said sale was void, but on the contrary state that the said sale was valid in all and every particular and that a good title was, by said conveyance, made to the Respondent, W. R. Stuart, who is now the owner of and in the actual possession of said lands.

7. The Respondents deny that the said P. E. Teter, as Agent for the Complainant, or any other person at any time notified the Respondents not to trespass upon or attempt to trespass upon the said lands, or any part thereof, but that the Respondent, W. R. Stuart, as the owner of said lands under his deed from the Judge of Probate of Baldwin County, Alabama, as he had a right to do, went into the possession of said lands and is in the possession thereof at this time. The Respondents deny that the timber on said property constitutes the principal value thereof and that the cutting of said timber will irreparably injure the Complainant, but on the contrary state that the Respondents are fully able and capable of remunerating the Complainant for any injuries that he might suffer, and that a judgment against them for damages would be collectible.

8. The Respondents deny that they or any of them have, at any time, trespassed upon said lands.

9. And further answering the Bill of Complaint, the Respondents say: That the Respondent, W. R. Stuart is the owner and in the actual possession of the land described in Paragraph 2 of the original Bill of Complaint, having acquired the same by deed as hereinabove set out; that upon acquiring title to said lands, the Respondent, W. R. Stuart, acting by and through himself and the Respondents, W.D. Stapleton, Randolph McGowan and Sullivan Sanks, went into the actual possession of said lands and all and every part thereof, and that his possession was evidenced by the cutting and removing of timber therefrom, and the warning and evicting of all

persons entering upon the said lands; that the said P. E. Teter, as Agent for the Complainant, was expressly warned to stay off of said lands and not molest or interfere with the same in any manner, and that he was further expressly warned not to interfere with the possession of the said Respondent, W. R. Stuart, or with the parties whom he had placed thereon to cut and remove the timber from said lands; that the title to said lands stands on the records in the name of, and is owned by the Respondent, W. R. Stuart, and that the Respondents, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and The Stapleton Insurance and Realty Corporation have no right, title or interest therein, and that all of their acts of possession in the cutting and removing of timber and the protection of the possession of said lands has been as the agent or employee of the said W. R. Stuart.

W.R. Stuart
Respondent

BEEBE & HALL,

By: H. S. Lee
Solicitors for Respondents.

STATE OF ALABAMA,)
BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared W. R. Stuart, who is known to me, and who having been by me first duly sworn, deposes and says, that he is the Respondent in the cause of Herman C. Nelson, as Trustee, ^{as Complainant} vs. W. R. Stuart, et al., as Respondents, now pending in the Circuit Court of Baldwin County, Alabama, in Equity; that he has read over ^{and} understands the foregoing answers to the original Bill of Complaint, and that the facts therein stated are true.

W.R. Stuart

Sworn to and subscribed before me
this 7th day of August, 1940.

O. B. ...
Notary Public, Baldwin County, Ala.

EXHIBIT "A"

"THE STATE OF ALABAMA,)
)
 BALDWIN COUNTY.)

KNOW ALL MEN BY THESE PRESENTS, THAT WHEREAS, on the 10th day of May, A. D., 1937, a decree was rendered by the Probate Court of said County for the sale of the lands hereinafter described and conveyed for the State and County taxes then due from Cliff Stevenson, the owner of said land for the costs and expenses thereof and thereunder.

AND WHEREAS, thereafter, to-wit, on the 17th day of June, A. D., 1937, said lands were duly and regularly sold by the Tax Collector of said County for said taxes, costs and expenses, and at said sale State of Alabama became the purchaser of said lands at and for the sum of said taxes, costs and expenses, and forthwith paid said sum to said Tax Collector, and received from said collector a certificate of said purchase.

AND WHEREAS, the time for the redemption of said lands by said owner or other person having an interest therein has elapsed and said certificate of purchase has been returned to the Probate Judge of said County.

NOW, THEREFORE, I, G. W. Robertson, as Probate Judge of said County of Baldwin, under and by virtue of the provisions of Section 241, of an Act of the Legislature of 1935, to provide for the general revenue of the State of Alabama, approved July 10, 1935, and in consideration of the premises above set out, and in further consideration of the sum of one dollar to me in hand paid, have this day granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto W. R. Stuart who is the present owner and holder of said certificate of purchase all the right, title and interest of the said Cliff Stevenson owner as aforesaid of said land, and all the right, title, interest and claim of the State and County on account of said taxes, or under said decree in and to the following described lands hereinafter referred to, to-wit:

$\frac{1}{2}$ of $\text{NE}\frac{1}{4}$ of $\text{SW}\frac{1}{4}$; $\text{SE}\frac{1}{4}$ of $\text{NE}\frac{1}{4}$ of $\text{SW}\frac{1}{4}$; $\text{SE}\frac{1}{4}$, except $\text{W}\frac{1}{2}$ of $\text{SW}\frac{1}{4}$ of $\text{SE}\frac{1}{4}$ Section 11, T 1 S, R 4 E; $\text{SW}\frac{1}{4}$ Section 12, T 1 S, R 4 E; $\text{NE}\frac{1}{4}$, except $\text{NW}\frac{1}{4}$ of $\text{NW}\frac{1}{4}$ of $\text{NE}\frac{1}{4}$ Section 14, T 1 S, R 4 E; $\text{SE}\frac{1}{4}$ of $\text{NW}\frac{1}{4}$, $\text{W}\frac{1}{2}$ of $\text{SW}\frac{1}{4}$ of $\text{NE}\frac{1}{4}$ of Section 22, T 1 S, R 4 E,

lying and being situate in said County and State, to have and to hold the same, the said rights, titles and interest unto himself the said W. R. Stuart and his heirs and assigns forever, but no right, title or interest of any reversioner or remaindermen in said land is conveyed hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, this the 18th day of June, A. D., 1940.

Probate Seal

G. W. Robertson,
 Judge of Probate.

 THE STATE OF ALABAMA,)
 BALDWIN COUNTY.)

I, Sally S. Mayo, a Notary Public, in and for said County, in said State, hereby certify that G. W. Robertson, whose name as Judge of Probate is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day, that, being informed of the contents of this conveyance, he, in his capacity as such Judge of Probate, executed the same voluntarily on the day the same bears date.

Given under my hand, this the 18th day of June, A. D., 1940.

(Seal)

Sally S. Mayo,
 Notary Public, Baldwin Co., Ala.

Filed June 25th, 1940;
 Recorded 71 NS, page 505.

RECORDED

ANSWER:

HERMAN C. NELSON, as
Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

*Filed August 5, 1940
R. S. Amick, Register*

HERMAN C. NELSON, as Trustee,

Complainant,

VS.

W. R. STUART, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 655.

COMPLAINANT'S BRIEF ON MOTION TO DISSOLVE INJUNCTION.

This cause being submitted on the Respondents' Motion to dissolve the Injunction heretofore issued in this cause on the ground that there is no equity in the Bill, the only question before the Court is:

DOES THE BILL CONTAIN EQUITY?

The Respondents, by submitting on this Motion alone limit the scope of the Court's inquiry to this question alone. Cox, et al, vs. Lerman, 233 Ala. 58, 169 So. 724.

The Motion to dissolve the Injunction for want of equity in the Bill, confesses the averments of the Bill, whether well or ill pleaded. Burch vs. Burch, 165 So. 387.

On a Motion to dissolve an Injunction for the want of equity in the Bill, the averments are taken as true. Poynter vs. Whiddon, 234 Ala. 168, 174 So. 507.

On a Motion to dissolve an injunction for the want of equity in the Bill, the facts stated and not the manner of their statement must be considered and all amendable defects will be treated as amended. Badham vs. Johnston, 193 So. 420.

The law being as shown by the late authorities hereinabove cited, let us now turn to the allegations of the Bill of Complaint. For the purpose of reducing the length of this brief, we are not setting out the allegations of the Bill of Complaint in full, but earnestly request the Court to carefully read all of its allegations and to consider these allegations in connection with the Motion to dissolve the injunction for the want of equity in the Bill and the briefs of the respective parties.

On a careful reading of the Bill of Complaint the Court will notice that the allegations thereof in substance are as follows: That Complainant owns and is in the peaceable possession of the land and the timber thereon; that the Respondents claim title to the said property under a void tax sale; that the Complainant, through his agent, tendered the Respondent, W. R. Stuart, the amount he paid for the said tax deed, together with all legal and proper charges, and warned Respondents not to trespass on the property prior to the time of their trespass on it; that the Respondent, Stuart, refused the tender, disregarded Complainant's warning not to trespass on the said property, started cutting and removing timber therefrom and notified Complainant's agent that the Respondents would cut and remove all of the timber thereon; that the timber constitutes the principal value of the property; that the cutting will irreparably injure the Complainant; that the trespass has damaged Complainant; that an injunction is necessary to restrain Respondents from cutting and removing the timber, and in conclusion, the Complainant offers to do equity. The Prayer for Relief is as follows:

"Your Orator prays that upon a final hearing of the cause made by this Bill of Complaint this Honorable Court will grant unto him the following relief:

1. That it will make and enter a decree adjudging and decreeing that the said Respondents and each of them have no right, title, interest in, claim or encumbrance upon the said lands, or any part thereof.

2. That by proper proceedings will ascertain and fix the amount of damages caused to your Orator by the trespass of the Respondents, their agents, servants or employees on the said property and render a proper decree in your Orator's favor therefor.

3. That the Respondents be enjoined and restrained from trespassing on the said property or any part thereof.

4. Your Orator further prays that pending a final hearing and determination of the issues of this suit, that there be issued a temporary writ of injunction or restraining order according to the rules and practice of this Honorable Court, restraining and enjoining the Respondents, W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and Stapleton Insurance and Realty Corporation, and each of them from cutting, removing, selling or in any manner disposing of all or any part of the timber on all or any part of the said lands and from doing anything or taking any action which would disturb the status quo of the said property.

5. Your Orator prays for such other, further and general relief as he may be equitably entitled to the premises considered."

The allegations contained in the Bill of Complaint bring the Bill squarely within the rule laid down in the case of Tidwell v. H. H. Hitt Lumber Company, 198 Ala. at page 244, where the Court makes this statement:

"In this case the complainant avers a threatened destruction of all of the timber on his land, a permanent injury to the substance of his estate, thus bringing his case within that class in which equity should interfere to prevent an injury deemed irreparable because no judgment at law can restore him to his estate in the character that he now enjoys it."

We are sure that the Court is so familiar with this rule which is still the law in Alabama, we will not burden the Court with a further discussion of it.

We also desire to call the Court's attention to the case of Acker vs. Green, 216 Ala. page 445, 113 So. 411, which held:

"The amended bill avers complainant is the owner of the 40 acres of timbered land, owns the legal title thereto, is in the possession of same, and that she and those under whom she claims have had continuous adverse possession thereof for 20 years; that defendants

unlawfully entered as trespassers thereon, and were proceeding after warning to erect a sawmill thereon, and to cut and destroy all the merchantable timber on the land; that the lands were chiefly valuable for the timber thereon.

Taken as true on demurrer, the bill makes a case of irreparable injury as defined in such cases. The owner of timbered lands is entitled to enjoy them in the state in which they are held and to have the benefit of the increment thereon. In this era of growing scarcity of standing timber, a tendency is toward protection of the owner by injunctive process, rather than leaving him to an action at law for money compensation. *Tidwell v. H. H. Hitt Lumber Co.*, 198 Ala. 236, 73 So. 486, L. R. A. 1917C, 232.

(10) Neither is the owner in possession required to concede the usurped possession of a trespasser and sue in ejectment, looking to equity to protect him while the suit at law is being heard. The owner is not required to concede to a trespasser the vantage ground of possession necessary to a recovery in ejectment. The injunction suit promptly brought may be viewed as one of the means of preventing the unlawful entry into possession which the trespasser is seeking to accomplish.

Irwin v. Shoemaker, 205 Ala. 13, 88 So. 129, presents a case of long acquiescence by complainant in the possession of the respondent and outlays by him rendering it inequitable to intervene by injunction. The equity of a case turns upon its particular facts." (emphasis ours)

The above case of *Acker v. Green* cannot be distinguished or differentiated from the present case as the Respondents' solicitor has attempted to do by stating that the Respondents there had no title and claim no title. It was there alleged that the defendant was a trespasser. In this present case we allege that the Defendants or Respondents are trespassers because they claim under a void tax sale. They are not protected from being trespassers by claiming under a void tax sale.

One claiming under a void certificate of purchase or a void tax deed has no right of entry against the lawful owner, nor is he relieved of damages for detention. *Abates v. Timbes*, 214 Ala. 591, 108 So. 534.

THE BILL OF COMPLAINT DOES NOT ALLEGE THAT THE RESPONDENTS HAVE TITLE. IT ALLEGES THAT THEY ARE TRESPASSERS CLAIMING TITLE THROUGH A VOID TAX SALE. TRUTH OF THESE AVERMENTS IS ADMITTED. Authorities supra.

"An injunction will issue to prevent a trespass to realty, which consists in the destruction of a material portion of that which is the chief value of the realty on which the trespass occurs, without other allegations of irreparable injury: that it is not necessary to concede such a usurped possession and be limited to a court of law." Brown vs. Ashworth, 237 Ala. 160, 185 So. 754.

Equity will restrain a trespass or threatened trespass if the probable injury resulting from the wrongful act cannot be compensated for in damages in a Court of law. 236 Ala. 674, 185 So. 172.

These authorities prove conclusively that the Bill has equity.

On reading the prayer for relief contained in the Bill, the Court will notice that the Complainant prays for three kinds of relief on final hearing, not including the prayer for general relief and in addition thereto prays for a temporary injunction or restraining order. In determining whether or not the Bill contains equity, the Court is required to consider the entire bill and not any one particular part thereof.

Respondents' able solicitor, in the brief filed by him in this cause, has much to say about the allegations relative to possession and has cited authorities to show that one out of possession cannot maintain a bill to quiet title and that a scrambling possession will not support a bill to quiet title. He has practically rested his case on this proposition. We do not and could not contend that a scrambling possession will support a bill to quiet title or that one out of possession can maintain such a bill, but this does not destroy the equity of the bill. As explained above, we ask for several kinds of relief. If, on a final hearing, the proof is such that it will not sustain a bill to quiet title, then, of course, the Court would not grant us such relief, but on the other hand, if

we, on final hearing, prove that the Complainant owns the legal title to the property and that the tax sale under which Respondents claim title is void, we would then be entitled to a permanent injunction restraining the Respondents from cutting timber on the property, would also be entitled to an accounting and to the appropriate relief under the general prayer. In this connection we desire to call the Court's attention to Section 6526 of the 1923 Code of Alabama which provides: "Unless taken by demurrer, objection to a bill because of multifariousness must not be entertained. A bill is not multifarious which seeks alternative or inconsistent relief growing out of the same subject matter, or founded on the same contract or transaction, or relating to the same property between the same parties."

A bill is not demurrable because it prays too much.
Booth v. Bates, 215 Ala. 632, 112 So. 209.

A bill is not demurrable where Complainant prays for too much where facts entitle him to part of the relief prayed for.
Berton v. Berton, 221 Ala. 544, 130 So. 67.

If such matters cannot be raised by demurrer (authorities supra) they cannot be considered on a motion to dissolve an injunction for want of equity in the bill.

We most respectfully submit that the bill as written contains equity and that the injunction should be allowed to remain in force and effect pending a final hearing of the issues made by this suit. The bill contains an offer to do equity by the complainant, who owns the legal title to more than five hundred acres of land in Baldwin County, Alabama, and in addition thereto an injunction bond has been given as required by law. These things will fully, adequately

and completely protect the Respondents even though the injunction remains in force, from any damage they may sustain. However, should the injunction be dissolved, then the Complainant would be subjected to the loss of the timber on his property which, admittedly, constitutes its principal value, a loss which no judgment or decree can restore, and will be called upon to litigate with the Respondents for damages for the cutting if he proves on final hearing that he owns the legal title to the property and that the tax title under which the Respondents claim is void.

In this connection we desire to call the Court's attention to the following authorities:

"Where, if the defendant's allegations are true, the injunction will do him no harm, and if the plaintiff's allegations are true, a dissolution will involve him in irreparable injury, the injunction will not be dissolved." Profile Cotton Mills v. Calhoun Water Company, 189 Ala. 181, 66 So. 50.

"In considering the question of dissolution on the denials of the answer, the Court is invested with a wide discretion, and will weigh the relative degree of injury or benefit to the respective parties which may ensue from the maintenance of the injunction on the one hand or its dissolution on the other, and especially so where the discretion of the lower court has apparently exercised without abuse." Holcomb vs. Forsyth, 216 Ala. 486, 113 So. 516.

In addition to the above authorities Respondents' solicitor has cited the case of Irwin Fishing and Hunting Club vs. Cobb, 179 So. 183, and we are delighted that he cited this case because of the following quotation therefrom.

"(5) Since the trees furnish shade and ornament to the use and enjoyment of the property by complainant, and are only valuable to defendant for commercial purposes, defendant could not sustain irreparable injury, since his possible loss is covered by the bond required and executed by complainant, but the loss to complainant would be irreparable if the trees were cut and it should be found on the trial that complainant owns the land and trees in dispute." (Here the Supreme Court held that the lower court erroneously dissolved the injunction and rendered

a decree reversing the lower court and reinstating the injunction).

Near the end of the Respondents' brief they state "that the Bill of Complaint is without equity and should be dismissed and along with it the injunction dissolved." In making this statement Respondents have evidently overlooked the fact that a motion to dismiss a bill for the want of equity was abolished in Alabama at the time of the adoption of the 1907 Code (Code of 1923, Section 6553). This rule was not changed by the adoption of the new Equity Rules. (Equity Rule 14). Due to the fact that a motion to dismiss a bill for the want of equity has been abolished the Court has no authority to dismiss the bill.

In conclusion, for the reasons above stated, we respectfully submit, may it please the Court, that the Bill of Complaint contains equity, and confidently believe and expect that the Court will render a decree denying Respondents' motion to dissolve the injunction.

Respectfully submitted,

J. T. Blackburn
Solicitor for Complainant.

I hereby certify that I delivered a copy of the foregoing Brief to Honorable H. M. Hall, Solicitor for the Respondents, on this the 20th day of August, 1940.

J. T. Blackburn
Solicitor for Complainant.

HERMAN C. NELSON, as Trustee,
Complainant,
VS.
W. R. STUART, et al,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER ____.

LIS PENDENS NOTICE.

STATE OF ALABAMA
BALDWIN COUNTY

Notice is hereby given that Herman C. Nelson, as Trustee, has on this day commenced suit in the Circuit Court of Baldwin County, Alabama, in equity against W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and the Stapleton Insurance and Realty Corporation, for an injunction restraining the respondents and each of them from cutting and removing timber from or otherwise disturbing the status quo of the following described property situated in Baldwin County, Alabama, to-wit:

North Half of Northeast Quarter of Southwest Quarter;
Southeast Quarter of Northeast Quarter of Southwest Quarter;
Southeast Quarter except West Half of Southwest Quarter of
Southeast Quarter, Section Eleven (11), Township One (1)
South Range Four (4) East;
Southwest Quarter of Section Twelve (12), Township One (1)
South Range Four (4) East;
Northeast Quarter, except Northwest Quarter of Northwest
Quarter of Northeast Quarter, Section Fourteen (14), Township
One (1) South Range Four (4) East;
Southeast Quarter of Northwest Quarter;
West Half of Southwest Quarter of Northeast Quarter of
Section Twenty-two (22), Township One (1) South Range Four
(4) East;

pending a determination of the issues made by this suit.

A brief statement of Complainant's cause of action is as follows:

The Complainant owns and is in the peaceable possession of said lands and the Defendants or some of them claim or are reputed to claim some right, title or interest in and to the said lands by virtue of a tax title which is alleged to be void, and that the Respondents or some of them are cutting and removing timber from the said property, in which bill of complaint the said Herman C. Nelson, as Trustee, prays for a temporary writ of injunction or

restraining order restraining and enjoining the Respondents from cutting and removing the timber from the above described property; prays that the injunction be made permanent; that Complainant's title to said lands be quieted and for general relief.

This instrument is filed as provided by Section 6878 of the 1923 Code of Alabama.

Dated this 5th day of August, 1940.

HERMAN C. NELSON, as Trustee,

By J. T. T. Blackburn
As his Solicitor of Record.

LIS PENDENS NOTICE.

HERMAN C. NELSON, as Trustee,
Complainant,

VS.

W. R. STUART, et al,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 655

State of Alabama, }
Baldwin County. } Probate Court.
I filed in office this AUG 6 - 1940
day of August at 1140 Am and duly recorded
in Deed book No. 1 at page 185-6
and I certify that \$ etc. Deed
tax and \$ etc. title tax, have
been paid as required by law.

W. R. Stuart
Judge of Probate

Filed August 6, 1940
R. S. Dicks, Register

R S Dicks
City

(60)

HERMAN C. NELSON, as Trustee,

Complainant,

VS.

W. R. STUART, et al,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER ____.

WRIT OF INJUNCTION.

TO W. R. STUART, W. D. STAPLETON, RANDOLPH MCGOWAN, SULLIVAN SANKS AND THE STAPLETON INSURANCE AND REALTY CORPORATION:

You will take notice that on the 5th day of August, 1940, Herman C. Nelson, as Trustee, filed in the Circuit Court of Baldwin County, Alabama, his Bill of Complaint, praying for an injunction against W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and the Stapleton Insurance and Realty Corporation; that the said Bill of Complaint was presented to the Honorable J. Blocker Thornton, Judge of the Circuit Court of Mobile County, Alabama, and that the said Judge made the following indorsement thereon:

"TO R. S. DUCK, REGISTER OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA: On Complainant entering into bond in the sum of \$150.00 with sufficient surety, to be approved by you as Register, conditioned as required by law, let an injunction issue as prayed for in the foregoing Bill of Complaint.

Given under my hand this 5th day of August, 1940.

J. Blocker Thornton
Judge of the Circuit Court of Mobile
County, Alabama."

You will further take notice that the said Herman C. Nelson, as Trustee, has entered into bond in the sum of One Hundred Fifty Dollars (\$150.00) conditioned as prescribed by law, which said bond has been approved by me:

NOW THEREFORE, you and each of you are hereby commanded, enjoined and restrained from cutting, removing, selling or in any manner disposing of all or any part of the timber on all or any part of the following described property in Baldwin County, Alabama, to-wit:

North Half of Northeast Quarter of Southwest Quarter;
Southeast Quarter of Northeast Quarter of Southwest Quarter;
Southeast Quarter except West Half of Southwest Quarter of
Southeast Quarter, Section Eleven (11), Township One (1)
South Range Four (4) East;
Southwest Quarter of Section Twelve (12), Township One (1)
South Range Four (4) East;
Northeast Quarter, except Northwest Quarter of Northwest
Quarter of Northeast Quarter, Section Fourteen (14), Township
One (1) South Range Four (4) East;
Southeast Quarter of Northwest Quarter;
West Half of Southwest Quarter of Northeast Quarter of

Section Twenty-two (22), Township One (1) South Range Four
(4) East;

and from doing anything and taking any action which would disturb the
status quo of the said property pending the determination of the issues
set up in the said suit.

IN WITNESS WHEREOF, I, R. S. Duck, Register of the said
Court have hereunto set my hand as Register of the said Court and
affixed the seal of the Court on this the 6th day of August, 1940.

R. S. Duck

Register.

RECORDED

Original

WRIT OF INJUNCTION.

HERMAN C. NELSON, as Trustee,
Complainant,

VS.

W. R. STUART, et al,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER _____.

Executed this _____ day of _____ 19 _____

By arresting the within
named Defendant

and placing him

Sheriff

D. S.

*Filed August 6, 1940
R.S. Duch, Register*

*M.C. Nelson
W.R. Stuart
6th*

Service accepted this 6th
day of August 1940
W.R. Stuart

Executed this 6th day of August 1940 by serving a copy of Writ in
sequestration on Randolph M. Howan, W.D. Stapleton individually and
W.D. Stapleton for Stapleton Insurance and Realty Corp and
Sullivan Banker.

W.R. Stuart Sheriff
By M.B. Kemmittan Deputy Sheriff

STATE OF ALABAMA,)
)
BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared RANDOLPH MCGOWAN, who is known to me and who having been by me first duly sworn, deposes and says: That he is personally acquainted with W. R. Stuart, a resident of Bay Minette, in Baldwin County, Alabama; that he is also acquainted with the following described lands in Baldwin County, Alabama, to-wit:

North half of Northeast quarter of Southwest quarter; Southeast quarter of Northeast quarter of Southwest quarter; Southeast quarter, except West half of Southwest quarter of Southeast quarter, Section 11, Township 1 South, Range 4 East; Southwest quarter of Section 12, Township 1 South, Range 4 East;
Northeast quarter, except Northwest quarter of Northwest quarter of Northeast quarter, Section 14, Township 1 South, Range 4 East;
Southeast quarter of Northwest quarter, West half of Southwest quarter of Northeast quarter of Section 22, Township 1 South, Range 4 East;

That, on to-wit, June 18th, 1940, the said W. R. Stuart acquired title to said lands by deed from G. W. Robertson, Judge of Probate of Baldwin County, Alabama, which deed is of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 71 NS, page 505; that immediately after title was acquired by the said W. R. Stuart, to said lands, the affiant, together with W. D. Stapleton, as Agents, Servants or Employees of the said W. R. Stuart, together with the said W. R. Stuart, went into the actual possession of all and every part of said lands; that they, together with the said W. R. Stuart and Sullivan Sanks, actually went upon the said lands and cut and removed a part of the timber thereon and were cutting and removing timber from said lands at the time suit was filed in this cause; that in addition to the cutting and removing of timber from said lands, the affiant, together with the other parties named herein, have protected and enforced the possession of the said W. R. Stuart by the warning and eviction of any parties entering upon said lands, or any part thereof, and have on one or more occasions actually evicted parties who had entered upon the said lands; that he, together with the said W. D. Stapleton, and W. R. Stuart, upon entering into the possession of said lands, warning and notifying P. E. Teter, who represented himself as an Agent of the Complainant, that they were in the actual possession of said lands and warned him against any trespass thereon, or any interference on his part with any of the operations of the said W. R. Stuart, the owner of said lands, thereon; that he, together with the other parties herein, have repeatedly advised the said P. E. Teter that they were in the actual possession

thereof and that the said W. R. Stuart was the actual owner of said lands and entitled to the possession and income therefrom;

That the title to the said lands is in the name of W. R. Stuart, who is the owner thereof.

Randolph M. Brown

Sworn to and subscribed before me this 22 day of August, 1940.

[Signature]
Notary Public, Baldwin County, Ala.

*W. R. Stuart
W. R. Stuart
W. R. Stuart*

IN WITNESS WHEREOF
I have hereunto set my hand and the seal of the Court of the County of Baldwin, Alabama, this 22nd day of August, 1940.

W. R. STUART
W. R. STUART
W. R. STUART

RECORDED
BALDWIN COUNTY, ALA.

RECORDED

There are several bills to receive Lauder and trust 2 E. W. has said that he received
thereof and that the said W. R. Stuart was the actual owner of said lands and em-
powered amount and income therefrom
of other friends in the name of W. R. Stuart, who is
the owner thereof.

W. R. Stuart

an exact description of amount
shown to and unreciprocated before me
this 10th day of August, 1940.

[Signature]
Notary Public, Baldwin County, Ala.

RECORDED

AFFIDAVIT OF RANDOLPH
MCGOWAN,

HERMAN C. NELSON, As
Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY.

*Filed Aug. 8, 1940
R. S. Dush, Register*

STATE OF ALABAMA,)
)
BALDWIN COUNTY.)

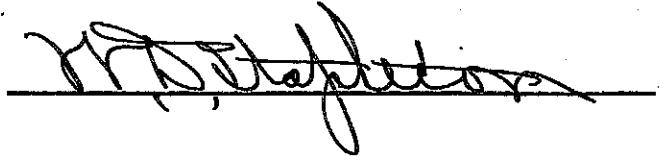
Before me, the undersigned authority, in and for said County, in said State, personally appeared W. D. STAPLETON, who is known to me and who having been by me first duly sworn, deposes and says: That he is personally acquainted with W. R. Stuart, a resident of Bay Minette, in Baldwin County, Alabama; that he is also acquainted with the following described lands in Baldwin County, Alabama, to-wit:

- North half of Northeast quarter of Southwest quarter; Southeast quarter of Northeast quarter of Southwest quarter;
- Southeast quarter, except West half of Southwest quarter of Southeast quarter, Section 11, Township 1 South, Range 4 East;
- Southwest quarter of Section 12, Township 1 South, Range 4 East;
- Northeast quarter, except Northwest quarter of Northwest quarter of Northeast quarter, Section 14, Township 1 South, Range 4 East;
- Southeast quarter of Northwest quarter, West half of Southwest quarter of Northeast quarter of Section 22, Township 1 South, Range 4 East;

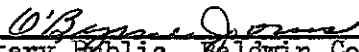
That, on to-wit, June 18th, 1940, the said W. R. Stuart acquired title to said lands by deed from G. W. Robertson, Judge of Probate of Baldwin County, Alabama, which deed is of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 71 NS, page 505; that immediately after title was acquired by the said W. R. Stuart, to said lands, the affiant, together with Randolph McGowan, as Agents, Servants or Employees of the said W. R. Stuart, together with the said W. R. Stuart, went into the actual possession of all and every part of said lands; that they, together with the said W. R. Stuart and Sullivan Sanks, actually went upon the said lands and cut and removed a part of the timber thereon and were cutting and removing timber from said lands at the time suit was filed in this cause; that in addition to the cutting and removing of timber from said lands, the affiant, together with the other parties named herein, have protected and enforced the possession of the said W. R. Stuart by the warning and eviction of any parties entering upon said lands, or any part thereof, and have on one or more occasions actually evicted parties who had entered upon the said lands; that he, together with the said Randolph McGowan, and W. R. Stuart, upon entering into the possession of said lands, warning and notifying P. E. Teter, who represented himself as an Agent of the Complainant, that they were in the actual possession of said lands and warned him against any trespass thereon, or any interference on his part with any of the operations of the said W. R. Stuart, the owner of said lands, thereon; that he, together with the other parties herein, have repeatedly advised the said P. E. Teter that they were in the actual possession

thereof and that the said W. R. Stuart was the actual owner of said lands and entitled to the possession and income therefrom;

That the title to the said lands is in the name of W. R. Stuart, who is the owner thereof.

A handwritten signature in dark ink, appearing to read "W. R. Stuart", is written over a horizontal line.

Sworn to and subscribed before me
this 9th day of August, 1940.


Notary Public, Baldwin County, Ala.

RECORDED

AFFIDAVIT OF W. D. STAPLETON

HERMAN C. NELSON, as
Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

*Filed Aug. 5, 1940
R. S. Dundy, Register*

HERMAN C. NELSON, as Trustee,
Complainant,
VS.
W. P. STUART, et al,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 655.

DECREE ON MOTION TO DISSOLVE INJUNCTION.

This cause coming on to be heard on this the 12th day of September, 1940, and being submitted on the sworn Bill of Complaint and respondents' Motion to Dissolve the Injunction heretofore issued in this cause for want of equity in the bill, which motion was filed in this cause on August 8, 1940, and upon consideration thereof the Court is of the opinion that the said Motion should be denied, and it is therefore Ordered, Adjudged and Decreed by the Court as follows:

That the said Motion to Dissolve the Injunction heretofore issued in this cause be and the same is hereby denied.

Dated this 12th day of September, 1940.



Judge.

DECRET

BERMAN O. NELSON, as
Trustee,

Complainant

VS.

W. R. STUART, et al,

Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY. NUMBER 655

*Filed September 12, 1940
R. S. Dinch, Register*

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE ALABAMA

HERMAN C. NELSON,
as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

Come the Respondents in the above styled cause and move the Court to dissolve the injunction heretofore issued in the aforesaid cause on the 6th day of August, 1940, enjoining the Respondents from cutting, removing, selling or in any manner disposing of all or any part of the timber on all or any part of the following described property in Baldwin County, Alabama, to-wit:

North half of Northeast quarter of Southwest quarter; Southeast quarter of Northeast quarter of Southwest quarter; Southeast quarter, except West half of Southwest quarter of Southeast quarter, Section 11, Township 1 South, Range 4 East; Southwest quarter of Section 12, Township 1 South, Range 4 East;
Northeast quarter, except Northwest quarter of Northwest quarter of ~~Northwest quarter~~ of Northeast quarter, Section 14, Township 1 South, Range 4 East;
Southeast quarter of Northwest quarter; West half of Southwest quarter of Northeast quarter of Section 22, Township 1 South, Range 4 East,

and from doing anything or taking any action which would disturb the status quo of the said property pending the determination of the issue set up in this suit, and for ground of such dissolution submits:

1. That the said bill filed in the Circuit Court of Baldwin County, Alabama, in Equity, on August 6th, 1940, the basis of the injunction, is without equity.
2. That it affirmatively appears from the Bill of Complaint in this cause, the basis of said injunction, that the Respondents are in the actual possession of the lands therein described and being the lands involved in this suit.
3. That it affirmatively appears from said Bill of Complaint that the Respondent, W. R. Stuart, is the owner of and in the actual possession of the lands described in said Bill of Complaint, and being the lands involved herein.
4. That for aught that appears from the Bill of Complaint in this cause, the Complainant has a full, complete and adequate remedy at law.

W. R. Stuart
Randolph M. Loran
W. R. Stuart
Respondents.

BEEBE & HALL,

By: *Wm. Lee*
Solicitors for Respondents.

HERMAN C. NELSON, AS TRUSTEE,

Complainant,

VS.

W. R. STUART, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 655.

MOTION FOR PRETRIAL CONFERENCE.

Now comes the Complainant in the above entitled cause, by his attorney, and respectfully represents unto the Court that the above styled cause is now ready for hearing on a motion to dissolve the injunction heretofore granted in this suit, which motion is set for hearing on August 19, 1940:

WHEREFORE, Complainant moves the Court to direct the attorneys for the parties to appear before it prior to hearing the motion to dissolve the injunction for a conference to consider:

1. The simplification of the issues.
2. The necessity or desirability of amendment to the pleadings.
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

Respectfully submitted,

J. T. S. Sackburn
Solicitor for Complainant.

*Motion granted - This 19th day of
August 1940 - J. M. Hall*

HERMAN C. NELSON, as Trustee,

Complainant,

VS.

W. R. STUART, W. D. STAPLETON,
RANDOLPH MCGOWAN, SULLIVAN SANKS
AND THE STAPLETON INSURANCE AND
REALTY CORPORATION,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

FINAL DECREE.

This cause coming on to be heard on this the 29th day of January, 1941, and being submitted on behalf of the Complainant on the original Bill of Complaint, Temporary Writ of Injunction or Restraining Order, Decree Denying Motion to Dissolve Injunction and Stipulation consenting that a Final Decree be rendered quieting Complainant's title against the Respondents; and on behalf of the Respondents on Motions to Dissolve Injunction and on the respective sworn Answers filed by them in the said cause, and upon consideration the Court is of the opinion that the Complainant is entitled to the relief prayed for in his said Bill of Complaint and IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That the Complainant, Herman C. Nelson, as Trustee, is, as against the Respondents, W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and the Stapleton Insurance and Realty Corporation, the true and lawful owner in his own right as such Trustee, of the following described real property situated in Baldwin County, Alabama, to-wit:

North Half of Northeast Quarter of Southwest Quarter;
Southeast Quarter of Northeast Quarter of Southwest Quarter;
Southeast Quarter except West Half of Southwest Quarter of
Southeast Quarter, Section Eleven (11), Township One (1) South
Range Four (4) East;
Southwest Quarter of Section Twelve (12), Township One (1)
South Range Four (4) East;
Northeast Quarter, except Northwest Quarter of Northwest
Quarter of Northeast Quarter, Section Fourteen (14), Township
One (1) South Range Four (4) East;
Southeast Quarter of Northwest Quarter;
West Half of Southwest Quarter of Northeast Quarter of
Section Twenty-two (22), Township One (1) South Range Four
(4) East.

2. That title to the said land is in the said Herman C. Nelson, as Trustee, and title thereto is forever quieted against the Respondents, W. R. Stuart, W. D. Stapleton, Randolph McGowan, Sullivan Sanks and the Stapleton Insurance and Realty Corporation, and the said Respondents and each of them are without any right, title or interest in the said land or any part thereof and have and hold no encumbrance on the said property or any part thereof, or any interest therein, and they and each of them are hereby perpetually enjoined from asserting or attempting to assert any claim to the said property or any part thereof or any interest therein, or from claiming any lien on the said property or any part thereof or any interest therein.

3. This Decree has been consented to by all of the parties to this proceeding.

4. Costs of this proceeding are hereby taxed against the Complainant, for which execution may issue.

Done at Monroeville, Alabama, on this the 29th day of

January, 1941.

A. W. Hare

Judge of the Circuit Court of Baldwin
County, Alabama, Sitting in Equity.

RECORDED

MOTION FOR PRETRIAL CONFERENCE.

HERMAN C. NELSON, as Trustee,
Complainant,

VS.

W. R. STUART, et al,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 655.

Filed Aug 19th 1940
W. W. Hale
Judge C

RECORDED

MOTION TO DISSOLVE INJUNCTION:

HERMAN C. NELSON, as Trustee,

Complainant,

VS.

W. R. STUART, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, IN EQUITY.

*Filed August 8, 1940
R. S. Dunch, Register*

RECORDED

FINAL DECREE.

HERMAN C. NELSON, as
Trustee,

Complainant,

VS.

W. R. STUART, W. D. STAPLETON,
RANDOLPH MCGOWAN, SULLIVAN
BANKS AND THE STAPLETON
INSURANCE AND REALTY CORP-
ORATION,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Filed January 30, 1941
R. S. Duck, Register

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA