

GULIE CUMBIE,

Plaintiff,

vs.

THOMAS EARLE, MAYBEN
PHILLIPS AND EARL
PHILLIPS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

5604

Come the Defendants in the above styled cause, acting by and through Chason & Stone as their attorneys, and move the Court to transfer the above styled cause from the law side of the Court to the equity side of said Court and as grounds for their said motion, say:

1. That an equitable question will arise, the decision of which would dispose of the cause and it cannot be disposed of in the law side of the Court.

2. That a proper defense of this cause depends upon the assertion of an equitable right or defense by the party Defendants in said cause, which equitable defense is hereinafter set out.

3. The Plaintiff in this cause has filed thirteen (13) counts in his complaint claiming damages for the cutting of pine trees and timber on the East Half of the Northwest Quarter of the Northwest Quarter and the West Half of the Southwest Quarter of the Northwest Quarter of Section 4, Township 3 North, Range 4 East. That the Defendant Mayben Phillips is the owner of the land lying immediately to the East of the above described lands, said Phillips land being described as the Northeast Quarter of the Northwest Quarter and the East Half of the Southwest Quarter of the Northwest Quarter of Section 4, Township 3 North, Range 4 East. That Mayben Phillips sold and conveyed the pine trees and timber of certain dimensions located upon said land to Thomas

Earle who proceeded to cut such timber on the Phillips land. The Plaintiff claims that the said Thomas Earle cut certain timber upon his lands described in said complaint. The Plaintiff is claiming according to a survey made by Daniel R. Andress, Jr., which survey was made approximately one year ago. The equitable question which arises as a defense in this case is the location of a disputed boundary line between the lands of the Plaintiff and Mayben Phillips hereinabove described.

4. The Defendants in this suit allege that the true boundary line between the lands of the Plaintiff and the lands of Mayben Phillips is located according to old corners that have been there many years. That such corners will coincide with the field notes; that the Defendant Mayben Phillips has had actual possession of his land up to such old corners for more than twenty years and he has caused the trees and timber to be cut up to such lines, which he claims, on one or more occasions prior to the present cutting. That the survey as made by Mr. Andress does not coincide with the field notes and does not coincide with the other recognized corners in the area. That the land which is now claimed by the Plaintiff under the Andress survey and which has heretofore been claimed by Mr. Phillips is recognized in the community as belonging to the Defendant Mayben Phillips.

WHEREFORE, the above named Defendants pray that this Court will grant this motion and will duly transfer this cause from the law side of the Court to the equity side of the Court and that the same shall be docketed therein and shall proceed in the equity side of said Court.


Attorneys for Defendants

STATE OF ALABAMA

BALDWIN COUNTY

Before me, John Chason, a Notary Public, in and for said County in said State, personally appeared Mayben Phillips, who

is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Mayben Phillips and he is one of the Defendants in that certain cause filed in the Circuit Court of Baldwin County, Alabama, Law Side, in which Gulie Cumbie is the Plaintiff, and Thomas Earle, Mayben Phillips and Earl Phillips are the Defendants. That he has read the foregoing motion and all of the allegations and facts alleged therein are true and correct.

Mayben Phillips

Sworn to and subscribed before me on
this 5th day of July, 1963.

[Signature]
Notary Public, Baldwin County, Alabama

FILED

JUL 8 1963

ALICE L. DUCK, CLERK
REGISTER

5604

GULIE CUMBIE,

Plaintiff,

vs

THOMAS EARLE, ET AL.,

Defendants

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY ALABAMA

AT LAW

***** * * * * *

MOTION TO TRANSFER TO EQUITY

***** * * * * *

FILED

JUL 8 63

ALICE J. DUCK, CLERK
REGISTER

CHASON & STONE

ATTORNEYS AT LAW
BAY MINETTE, ALABAMA

GULIE CUMBIE,	Ø	
	Ø	IN THE CIRCUIT COURT OF
Plaintiff,	Ø	
vs.	Ø	BALDWIN COUNTY, ALABAMA
	Ø	
THOMAS EARLE, MAYBEN PHILLIPS	Ø	AT LAW
and EARL PHILLIPS,	Ø	
Defendants.	Ø	
	Ø	

Come the Defendants in the above styled cause and demur to the Complaint filed in said cause and each and every count thereof, separately and severally, and assign the following separate and several grounds, viz:

1. That there is a misjoinder of parties Defendant in this cause.
2. That the Plaintiff does not seek to recover from each Defendant under each and every count of the complaint.
3. Counts "5", "6", "7" "8" of the complaint affirmatively show that the property described as being converted is real estate. That such counts erroneously refer to such property as being chattles.
4. That counts "9", "10", "11", and "12" fail to allege who cut the timber referred to.
5. Counts "9", "10", "11" and "12" do not allege that the timber cut was located upon the lands described in said counts.
6. That the pine trees which are alleged to have been cut is not sufficiently set out in any of the counts.
7. Count "13" fails to sufficiently set out who trespassed upon the lands of the Plaintiff.
8. Count "13" is vague and indefinite.
9. Count "13" fails to allege how much timber was cut and

removed from the lands described therein.

Garrett & Sons

Attorneys for Defendants

FILED
SEP 4 1985
WILLIAM J. DUCK, CLERK
REGISTER

5604

GULIE CUMBIE,

Plaintiff

vs.

THOMAS EARLE, MAYBEN PHILLIPS
and EARL PHILLIPS,

Defendants

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

* * * * *

FILED

SEP 24 1913

ALICE L. DUCK, CLERK
REGISTER

CHASON & STONE

ATTORNEYS AT LAW
BAY MINETTE, ALABAMA

GULIE CUMBIE,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
Vs.	X	BALDWIN COUNTY, ALABAMA
THOMAS EARLE, MAYBEN PHILLIPS	X	AT LAW
AND EARL PHILLIPS,	X	5604
Defendants.	X	

1.

The Plaintiff claims of the Defendants \$1100.00 for conversion by them, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

120 cords of pine paper wood; the property of the Plaintiff.

2.

The Plaintiff claims of the Defendant, Mayben Phillips, \$1100.00 for conversion by him, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

120 cords of pine paper wood; the property of the Plaintiff.

3.

The Plaintiff claims of the Defendant, Thomas Earle, \$1100.00 for conversion by him, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

120 cords of pine paper wood; the property of the Plaintiff.

4.

The Plaintiff claims of the Defendant, Earl Phillips, \$1100.00 for conversion by him, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

120 cords of pine paper wood; the property of the Plaintiff.

5.

The Plaintiff claims of the Defendants the sum of \$1100.00 for conversion by them, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

625 pine trees; the property of the Plaintiff.

6.

The Plaintiff claims of the Defendant, Mayben Phillips, \$1100.00 for conversion by him, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

625 pine trees; the property of the Plaintiff.

7.

The Plaintiff claims of the Defendant, Thomas Earle, \$1100.00 for conversion by him, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

625 pine trees; the property of the Plaintiff.

8.

The Plaintiff claims of the Defendant, Earl Phillips, \$1100.00 for conversion by him, during the month of October, 1962, the exact date being to the Plaintiff unknown, the following chattels, to-wit:

625 pine trees; the property of the Plaintiff.

9.

The Plaintiff claims of the Defendants the sum of \$12,500 damages for that the Defendants did knowingly and willfully trespass on the lands of the Plaintiff, which land is described as follows:

The East half of the Northwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East; and, the West half of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East, lying and being in Baldwin County, Alabama;

and did, without the Plaintiff's consent or permission, cut 625 pine trees during the month of October, 1962, the exact date of which is unknown to the Plaintiff, all to the loss of the Plaintiff in the aforesaid amount.

10.

The Plaintiff claims of the Defendants, Thomas Earle and Mayben Phillips, the sum of \$12,500.00, damages for that Thomas Earle did, by and through his servant, Mayben Phillips, knowingly and willfully trespass on the land of the Plaintiff, which land is described as follows:

The East half of the Northwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East; and, the West half of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East, lying and being in Baldwin County, Alabama;

and did, without the Plaintiff's consent or permission, cut 625 pine trees during the month of October, 1962, the exact date of which is unknown to the Plaintiff, all to the loss of the Plaintiff in the aforesaid amount.

11.

The Plaintiff claims of the Defendants, Thomas Earle and Earl Phillips, the sum of \$12,500.00, damages for that Thomas Earle did, by and through his servant, Earl Phillips, knowingly and willfully trespass on the land of the Plaintiff, which land is described as follows:

The East half of the Northwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East; and, the West half of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East, lying and being in Baldwin County, Alabama;

and did, without the Plaintiff's consent or permission, cut 625 pine trees during the month of October, 1962, the exact date of which is unknown to the Plaintiff, all to the loss of the Plaintiff in the aforesaid amount.

12.

The Plaintiff claims of the Defendants, Mayben Phillips and Earl Phillips, the sum of \$12,500.00, damages for that Mayben Phillips did, by and through his servant, Earl Phillips, knowingly and willfully trespass on the land of the Plaintiff, which land is described as follows:

The East half of the Northwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East; and, the West half of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East, lying and being in Baldwin County, Alabama;

and did, without the Plaintiff's consent or permission, cut 625 pine trees during the month of October, 1962, the exact date of which is unknown to the Plaintiff, all to the loss of the Plaintiff in the aforesaid amount.

13.

The Plaintiff claims of the Defendants \$12,500.00, damages for trespass by the Defendants, or others acting by their direction and authority, on the following described lands, to-wit:

The East half of the Northwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East; and, the West half of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 4 East, lying and being in Baldwin County, Alabama;

and for the removing and cutting of timber therefrom, during the month of October, 1962, the exact date of which is to the Plaintiff unknown, by the Defendants, or others acting by their direction or authority.

WILTERS & BRANTLEY

BY:

Robert M Brantley
Attorney for Plaintiff

Plaintiff demands a trial by jury.

WILTERS & BRANTLEY

BY:

Robert M Brantley
FILED

JUN 18 1963

ALICE I. DUCK, CLERK
REGISTER

530

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,

Baldwin County.

Circuit Court, Baldwin County

No. 5604

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon Thomas Earle, Mayben Phillips, and Earl Phillips

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

Thomas Earle, Mayben Phillips & Earl Phillips, Defendant

by Gulie Cumbie

Plaintiff

Witness my hand this 18th day of June 1963

EX-6-20-63

Alice J. Duck, Clerk

No. 5604

Page

STATE of ALABAMA

Baldwin County

CIRCUIT COURT

GULIE CUMBIE

Plaintiffs

vs.

THOMAS EARLE, MAYBEN PHILLIPS & EARL

PHILLIPS

Defendants

Summons and Complaint

Filed June 18th 1963

Alice J. Duck

Clerk

Walters & Brantley

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

June 18, 1963

Sheriff.

I have executed this summons

this June 26 1963

by leaving a copy with

Thomas Earle
Mayben Phillips
Earl Phillips

Sheriff claims 210 miles at
Ten Cents per mile Total \$21.00
TAYLOR WILKINS Sheriff
BY [Signature] DEPUTY SHERIFF

Taylor Wilkins
W. A. Tolbert
Little River
Sheriff.
Deputy Sheriff.