

COPY

SMITH & JOHNSTON  
LAWYERS  
FIRST NATIONAL BANK BUILDING  
MOBILE, ALABAMA

HARRY H. SMITH  
SAMUEL M. JOHNSTON  
DAN T. McCALL, JR.  
C. B. ARENDALL, JR.  
WILLIAM E. JOHNSTON

September 6, 1941

Judge C. R. Shannon  
412-413 Van Antwerp Building  
Mobile, Alabama

Dear Judge Shannon:

Your two letters of September 5th have been received, with reference to the case of Most Reverend T. J. Toolen, Bishop of Mobile, a corporation Sole, Complainant vs. Margaret C. Clarke, et al., Respondent.

My understanding is that we were to agree upon a date for hearing the plea in the nature of a plea in abatement filed by me. If you are of the opinion that I agreed not to take any action on the plea, you misunderstood me. Mrs. Clarke, of course, is anxious to have the case in Bay Ninette disposed of, and I would not wish to waive any defense which we might have to it. I am sorry we misunderstood each other on this particular point. If you wish to agree upon a date for hearing the plea, I will be glad to discuss the matter.

In your other letter of September 5th, you mention a further agreement with me with reference to a deed to Bishop Toolen from Edward Toxey Clarke to a one-third interest in the Annie C. Clarke property at Battles Wharf. In reply, I must state it is my opinion that all of the real property of the Annie C. Clarke estate is subject to administration purposes under the jurisdiction of the Circuit Court of Mobile County in Equity, where the estate is now pending, and any conveyance which Bishop Toolen received from Edward Toxey Clarke to property of the late Annie C. Clarke is subject to the payment of debts of the estate. To this end our office filed a petition in the Circuit Court of Mobile County, Alabama, in Equity, on August 16th, seeking a private sale of all

Judge C. R. Shannon

- 2 -

September 6, 1941

of the property of Annie C. Clarke estate.

If there are any matters which you wish to discuss with me relating either to the suit in Baldwin County of the Estate of Annie C. Clarke, please let me hear from you.

Respectfully,

SMITH & JOHNSTON

By:

*Sam R. DeLoe, Jr.*

DTMajr/ceg

cc - Mr. James A. Crane  
Register in Chancery  
Mobile, Alabama

Mr. R. S. Duck  
Clerk of the Circuit Court  
Baldwin County  
Bay Minette, Alabama

737

The State Of Alabama } Circuit Court of Baldwin County, In Equity.  
Baldwin County }

To Any Sheriff of the State of Alabama—GREETINGS:

WE COMMAND YOU, That you summon MARGARET C. CLARKE, ARTHUR E. CLARKE, JR., WILLIAM MICHAEL CLARKE, GEORGE FRANCIS CLARKE, STEPHEN S. CLARK, II,

of Mobile County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

MOST REV. T. J. TOOLEN, BISHOP OF MOBILE, A CORPORATION SOLE,

against said MARGARET C. CLARKE, ARTHUR P. CLARKE, JR., WILLIAM MICHAEL CLARKE, GEORGE FRANCIS CLARKE, STEPHEN S. CLARKE, II.,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, R. S. Duck, Register of said Circuit Court, this 17th day of July, 194 1.

R. S. Duck, Register

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

Most Rev. T. J. Toolen,  
Bishop of Mobile, a  
Corporation Sole,  
Complainant,

-vs-

Margaret C. Clarke,  
Arthur P. Clarke, Jr.,  
William Michael Clarke,  
George Francis Clarke,  
Stephen S. Clarke, II,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY # \_\_\_\_\_.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes, Complainant, Most Rev. T. J. Toolen, Bishop of Mobile, a Corporation Sole, and exhibits this, his Bill of Complaint, against Margaret C. Clarke, Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke and Stephen S. Clarke, II, Respondents, and alleges as follows:--

1.- Complainant is above the age of twenty-one years and is Most Rev. T. J. Toolen, Bishop of Mobile, a Corporation Sole, #400 Government Street, Mobile, Alabama, duly incorporated as provided by the laws of Alabama and owns an undivided one-third interest in the hereinafter described real property, with the improvements thereon, having purchased said undivided one-third interest from Edgar Toxey Clarke, son of Annie C. Clarke, deceased.

That Margaret C. Clarke, the widow, and sole legatee and devisee as shown in the Last Will and Testament of Stephen S. Clarke, deceased, owns an undivided one-third interest in the hereinafter described property, with the improvements thereon; the said Stephen S. Clarke died at Mobile, Alabama, July 4, 1940, testate, and by his Last Will and Testament, which bequeathed and devised his entire estate to his wife, Margaret C. Clarke, which said Last Will and Testament has been probated in the Probate Court of Mobile County, Alabama, and all claims and Court costs against said estate fully paid; and the said Margaret C. Clarke, being sole owner of an undivided one-third interest in the hereinafter described real property, with the improvements thereon, the said Stephen S. Clarke, deceased, being a son of Annie C. Clarke, deceased, and the said Margaret C. Clarke, is now unmarried and is above the age of twenty-one years and resides at #205 Beauregard Street, Mobile, Alabama.

That the said Annie C. Clarke died intestate at Mobile, Alabama, October 3, 1936, and all claims and costs against her estate are fully paid, and her only heirs at law and next of kin are the said named Edgar Toxey Clarke, above twenty-one years of age, the said Stephen S. Clarke (now deceased, having died July 4, 1940), who died testate, as hereinabove shown, his only legatee and devisee being his wife, Margaret C. Clarke, now unmarried, and above twenty-one years of age, and the heirs of Arthur P. Clarke, deceased; the said Arthur P. Clarke died testate in Sept. 19, 1932 and all claims and Court costs against his estate are fully paid and his only heirs at law and next of kin are the following: a Son, Arthur P. Clarke, Jr., a minor, above twenty years of age, residing at Mobile, Alabama, at #262 Beauregard Street; and a Son, William Michael Clarke, a minor, age fourteen years, residing at #262 Beauregard Street, Mobile, Alabama, and a Son, George Francis Clarke, a minor, age fifteen years and residing at #262 Beauregard Street, Mobile, Alabama, and a Son, Stephen S. Clarke, II, a minor, sixteen years of age, and residing at #262 Beauregard Street, Mobile, Alabama; the said named Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke and Stephen S. Clarke, II, owing an undivided one-twelfth each of hereinafter described real property, with the improvements thereon.

The description of said property being as follows, to-wit:--

The following described real property, with the improvements thereon, situated in the County of Baldwin, State of Alabama, to-wit:--

Commencing at the Southeast corner or intersection of Henshaw's Road and the right of way on the Bluff on the Eastern Shore of Mobile Bay; running thence South 23° East along the East side of the right of way 150 feet, more or less, to the property of Bishop Allen; thence South 73° and 45' East 273 feet 10 inches; more or less; thence North 3° East 235 feet 5 inches to Henshaw's Road, more or less, thence Westwardly with the Henshaw Road 88° West 215 feet 9 inches, more or less, to the place of beginning; bounded on the North by Henshaw's Road; East by lot formerly of John Callaghan; South by property now or formerly of Bishop Allen; and West by right of way on Mobile Bay; being a portion of Fractional Section 25, Township 6 South, Range 1 East, of the Northern or upper division of the Point Clear Tract, and being the same property conveyed to James McPhillips by Deed of E. A. Gascoyne and husband on the 29th day of September, 1876, recorded in the Probate Court of Baldwin County in Book "K" at pages 268 and 269.

2. Complainant alleges that above described real property, with the improvements thereon, cannot be fairly and equitably divided or partitioned amongst the joint owners thereof, without a sale, inasmuch

as said property is so situated that a division in kind amongst the joint owners thereof is not possible and a division cannot be made among the joint owners thereon, except, by a sale of said described real property, with the improvements thereon.

3. Said named minors, Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke and Stephen S. Clarke, II, each, have no guardian and Complainant prays that guardian ad litem be appointed by the Court for said named minors.

The premises considered, Complainant prays that said Margaret C. Clarke, Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke, and Stephen S. Clarke, II, be made party Respondents to this Bill of Complaint and that they each be required to plead, answer, or demur to the same, within the time required by law, and that such other orders and decree be made and such proceedings had to the end that the hereinabove described real property, with the improvements thereon, may be sold for division and partition among the said joint owners, and that Complainant may have such other, further and general relief as may appear to the Court as may be just and equitable.

And Complainant will ever pray, etc.

Most Rev T. J. Toolen  
Bishop of Mobile, a Corporation  
Sole, Complainant.

C. P. Shannon  
Attorney for Complainant,  
#412-413 Van Antwerp Bldg.,  
Mobile, Alabama.

Subscribed and sworn to by Complainant, Most Rev. T. J. Toolen, Bishop of Mobile, a Corporation Sole, before me this 15th day of July, 1941.

Marie McLaron  
Notary Public, Mobile County, Ala.

My commission as a Notary Public  
expires June 16 - 1943.

The State Of Alabama } Circuit Court of Baldwin County, In Equity.  
Baldwin County }

To Any Sheriff of the State of Alabama—GREETINGS:

WE COMMAND YOU, That you summon

MARGARET C. CLARKE, ARTHUR P. CLARKE, JR., WILLIAM MICHAEL CLARKE,  
GEORGE FRANCIS CLARKE, STEPHEN S. CLARKE, II

of MOBILE County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited

by MOST REV T. J. TOOLEN, BISHOP OF MOBILE, A CORPORATION SOLE.

against said MARGARET C. CLARKE, ARTHUR P. CLARKE, JR., WILLIAM MICHAEL CLARKE, GEORGE FRANCIS CLARKE, STEPHEN S. CLARKE, II,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, R. S. Duck, Register of said Circuit Court, this 17th day of July, 194 1.

R.S. Duck, Register

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

Copy

Most Rev. T. J. Toolen,  
Bishop of Mobile, a  
Corporation Sole,  
Complainant,

-vs-

Margaret C. Clarke,  
Arthur P. Clarke, Jr.,  
William Michael Clarke,  
George Francis Clarke,  
Stephen S. Clarke, II,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY # \_\_\_\_\_.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes, Complainant, Most Rev. T. J. Toolen, Bishop of Mobile, a Corporation Sole, and exhibits this, his Bill of Complaint, against Margaret C. Clarke, Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke and Stephen S. Clarke, II, Respondents, and alleges as follows:--

1.- Complainant is above the age of twenty-one years and is Most Rev. T. J. Toolen, Bishop of Mobile, a Corporation Sole, #400 Government Street, Mobile, Alabama, duly incorporated as provided by the laws of Alabama and owns an undivided one-third interest in the hereinafter described real property, with the improvements thereon, having purchased said undivided one-third interest from Edger Toxey Clarke, son of Annie C. Clarke, deceased.

That Margaret C. Clarke, the widow, and sole legatee and devisee as shown in the Last Will and Testament of Stephen S. Clarke, deceased, owns an undivided one-third interest in the hereinafter described property, with the improvements thereon; the said Stephen S. Clarke died at Mobile, Alabama, July 4, 1940, testate, and by his Last Will and Testament, which bequeathed and devised his entire estate to his wife, Margaret C. Clarke, which said Last Will and Testament has been probated in the Probate Court of Mobile County, Alabama, and all claims and Court costs against said estate fully paid; and the said Margaret C. Clarke, being sole owner of an undivided one-third interest in the hereinafter described real property, with the improvements thereon, the said Stephen S. Clarke, deceased, being a son of Annie C. Clarke, deceased, and the said Margaret C. Clarke, is now unmarried and is above the age of twenty-one years and resides at #205 Beauregard Street, Mobile, Alabama.



Copy

That the said Annie C. Clarke died intestate at Mobile, Alabama, October 5, 1936, and all claims and costs against her estate are fully paid, and her only heirs at law and next of kin are the said named Edgar Doney Clarke, above twenty-one years of age, the said Stephen S. Clarke (now deceased, having died July 4, 1940), who died testate, as hereinabove shown, his only legatee and devisee being his wife, Margaret C. Clarke, now unmarried, and above twenty-one years of age, and the heirs of Arthur P. Clarke, deceased; the said Arthur P. Clarke died testate in Sept. 19, 1938, and all claims and Court costs against his estate are fully paid and his only heirs at law and next of kin are the following: a Son, Arthur P. Clarke, Jr., a minor, above twenty years of age, residing at Mobile, Alabama, at #262 Beaugard Street; and a Son, William Michael Clarke, a minor, age fourteen years, residing at #262 Beaugard Street, Mobile, Alabama, and a Son, George Francis Clarke, a minor, age fifteen years and residing at #262 Beaugard Street, Mobile, Alabama, and a Son, Stephen S. Clarke, II, a minor, sixteen years of age, and residing at #262 Beaugard Street, Mobile, Alabama; the said named Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke and Stephen S. Clarke, II, owing an undivided one-twelfth each of hereinafter described real property, with the improvements thereon.

The description of said property being as follows, to-wit:--

The following described real property, with the improvements thereon, situated in the County of Baldwin, State of Alabama, to-wit:-- Commencing at the Southeast corner or intersection of Henshaw's Road and the right of way on the Bluff on the Eastern Shore of Mobile Bay; running thence South 25° East along the East side of the right of way 150 feet, more or less, to the property of Bishop Allen; thence South 75° and 45' East 273 feet 10 inches; more or less; thence North 5° East 225 feet 5 inches to Henshaw's Road, more or less, thence Westwardly with the Henshaw Road 80° West 315 feet 9 inches, more or less, to the place of beginning; bounded on the North by Henshaw's Road; East by lot formerly of John Callaghan; South by property now or formerly of Bishop Allen; and West by right of way on Mobile Bay; being a portion of Fractional Section 25, Township 6 South, Range 1 East, of the Northern or upper division of the Point Clear Tract, and being the same property conveyed to James McPhillips by Deed of E. A. Cascoyne and husband on the 29th day of September, 1876, recorded in the Probate Court of Baldwin County in Book "K" at pages 268 and 269.

2. Complainant alleges that above described real property, with the improvements thereon, cannot be fairly and equitably divided or partitioned amongst the joint owners thereof, without a sale, inasmuch

Copy

as said property is so situated that a division in kind amongst the joint owners thereof is not possible and a division cannot be made among the joint owners thereon, except, by a sale of said described real property, with the improvements thereon.

5. Said named minors, Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke and Stephen S. Clarke, II, each, have no guardian and Complainant prays that guardian ad litem be appointed by the Court for said named minors.

The premises considered, Complainant prays that said Margaret C. Clarke, Arthur P. Clarke, Jr., William Michael Clarke, George Francis Clarke, and Stephen S. Clarke, II, be made party Respondents to this Bill of Complaint and that they each be required to plead, answer, or demur to the same, within the time required by law, and that such other orders and decrees be made and such proceedings had to the end that the heretofore described real property, with the improvements thereon, may be sold for division and partition among the said joint owners, and that Complainant may have such other, further and general relief as may appear to the Court as may be just and equitable.

And Complainant will ever pray, etc.

Most Rev. T. J. Toolen  
Bishop of Mobile, a Corporation Sole, Complainant.

OP Shannon  
Attorney for Complainant,  
7412-412 Van Antwerp Bldg.,  
Mobile, Alabama.

Subscribed and sworn to by Complainant, Most Rev. T. J. Toolen, Bishop of Mobile, a Corporation Sole, before me this 15th day of July, 1941.

Marie McCarroll  
Notary Public, Mobile County, Ala.

My commission as a Notary Public expires June 16, 1943.

(Notary Seal)

MOST. REV. T. J. TOOLEN,  
BISHOP OF MOBILE, a Corp-  
oration Sole,

Complainant

versus

MARGARET C. CLARKE,  
ARTHUR P. CLARKE, JR.  
WILLIAM MICHAEL CLARKE,  
STEPHEN S. CLARKE, II,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. \_\_\_\_\_

Plea of Margaret C. Clarke to the Bill of Complaint of Most Reverend T. J. Toolen, Bishop of Mobile, a Corporation Sole:

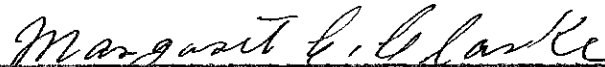
And now comes Margaret C. Clarke, one of the Respondents in the above entitled cause, and by protestation not confessing or acknowledging any of the matters in Complainant's Bill of Complaint to be true in such manner and form as the same are therein set forth, does specially plead thereto, and for plea to the jurisdiction of the Court says:

That at and prior to the filing of the Bill of Complaint in this cause, the administration of the estate of Annie C. Clarke, deceased, was pending in the Circuit Court of Mobile County, Alabama, in Equity, and the real property described in the Bill of Complaint, which belonged at the time of her death to said Annie C. Clarke, is subject to sale for the payment of debts of her said estate and the expenses of administration, which now remain unpaid, and which constitute a charge against said real property, and such a sale will be necessary because the personal property of said estate has long since been exhausted. To this end, the said Circuit Court of Mobile County, Alabama, in Equity, having exclusive jurisdiction over all of the property of the deceased in the State of Alabama and to order a sale

thereof, entered an order or decree on the 11th day of July, 1941, authorizing and directing the Register of said Court to retain and hold the assets of the estate together, including the real property, for the purpose of paying the said debts of the estate and the expenses of administration.

And this respondent further shows unto the Court that there is now pending before the Circuit Court of Mobile County, Alabama, in the cause entitled "In the Matter of the Estate of Annie C. Clarke, Deceased, In the Circuit Court of Mobile County, Alabama, In equity, - No. 12344", a verified petition filed by James A. Crane, Register of said Court, praying for a sale of the real property described in Complainant's bill of Complaint for the payment of debts of the said Estate and the expenses of its administration, it being averred in said petition that the personal property of the said Estate is insufficient to pay said indebtednesses and that a sale of the real property is necessary therefor.

THEREFORE, this Court has not and ought not to entertain jurisdiction of this suit, and the Respondent avers that all of the matters herein alleged are true, and pleads the same to the whole Bill, and prays the judgment of this Honorable Court whether she ought to be compelled to make any answer to the said Bill of Complaint; and prays to be hence dismissed with her reasonable costs in this behalf sustained.

  
MARGARET C. CLARKE

  
HER SOLICITORS

STATE OF ALABAMA )

COUNTY OF MOBILE )

Before me, Samuel R. Cause, the undersigned Notary Public in and for said State and County, personally appeared Margaret C. Clarke, who, upon being first duly sworn on oath, deposes and says that the facts stated in the above and foregoing pleas are true and correct.

Dated this 16<sup>th</sup> day of August, 1941.

Margaret C. Clarke

Samuel R. Cause  
Notary Public, Mobile County,  
Alabama.

357 / 739  
**RECORDED**

Bill of Complaint

(B)

Margaret C. Clarke resides at  
205 Beauvoir St,  
Mobile, Ala.

Other respondent resides at  
262 Beauvoir St.

Received ..... 18 ..... Day of July 19 41  
and on ..... 19 ..... Day of August 19 41  
I served a copy of the within .....  
at .....  
by service on .....  
W. H. HOLCOMBE, Sheriff, Mobile, Ala.

By M. Bernstein D.S.

Copy for William Michael Clarke  
7-18-41

No. 7-18-41

No. 7-22-41

Not found in my County after diligent search and inquiry.

W. H. HOLCOMBE, Sheriff, Mobile, Ala.

M. Bernstein, D.S.

Filed July 17, 1941  
R. L. Dush, Registrar

C. R. SHANNON  
ATTORNEY AT LAW  
412-413 VAN ANTWERP BUILDING  
MOBILE, ALABAMA

*copy* For William Michael Clarke  
262 Beauregard Street  
Mobile Ala.

*Out State  
In Texas  
Houston*

---

*Lower Supply Co*

*Filed July 17, 1941  
R.S. Pugh, Register*

C. R. SHANNON  
ATTORNEY AT LAW  
412-413 VAN ANTWERP BUILDING  
MOBILE, ALABAMA

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY NO. 727

MOST REV. T. J. TOOLEN,  
BISHOP OF MOBILE, a Cor-  
poration Sole,

Complainant,

vs.

MARGARET C. CLARKE,  
ARTHUR P. CLARKE, JR.  
WILLIAM MICHAEL CLARKE,  
STEPHEN S. CLARKE, II,

Respondents.

*Filed August 18, 1941*  
*R. S. Duch, Register*

PLEA IN NATURE OF A PLEA  
~~IN ABATEMENT~~

SMITH & JOHNSTON

LAWYERS

FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA



Post Office Treatment  
OFFICIAL BUSINESS  
REGISTERED ARTICLE

REGISTERED PARCEL

Post Office of Origin

Post Office of Destination

Post Office of Delivery

Post Office of Return

RECEIPT FOR REGISTERED ARTICLE

POSTAL SERVICE

RECEIPT FOR REGISTERED ARTICLE No. 30

15 fee paid. 1 class postage paid. 7-17, 1941

Declared value, \$ None Surcharge paid, \$ —

From R. S. Ditch (Sender)

B-7 (Street and number) (Post office and State)

Addressed to Frank H. Riddle (Address)

104 Fox St Aurora, Ill (Street and number) (Post office and State)

Accepting employee will place initials in space below, indicating restricted delivery

Return receipt fee 3 in person 10 Special delivery fee  
Delivery restricted to addressee or order Postmaster, per WHR



RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this form.

Received by \_\_\_\_\_

(Signature of addressee)

(Signature of Postmaster's agent)

Date of return \_\_\_\_\_ 19\_\_

Post Office \_\_\_\_\_

Produced by \_\_\_\_\_  
V. D. No. \_\_\_\_\_