

820

WILEY V. HAMILTON,
Complainant
VS.

STATE OF ALABAMA and
Augustine Meaher, Jr., as
Executor under the last
Will and Testament of
Augustine Meaher, Deceased,
and HELEN R. MEAHER, as
Executrix and Trustee under
the last will and testament
of Augustine Meaher, Deceased,

Respondents.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA
IN EQUITY

NO. 820

This matter coming on for hearing, and it appearing to the Court that on June 2, 1942, the respondents filed their demurrer to the Bill of Complaint, which demurrer was submitted to the Court, and on the 29th day of April, 1943, the Courts sustained said demurrer to the Bill of Complaint and gave the complainant thirty days in which to amend his Bill of Complaint, if he saw fit to do so, and it appearing to the Court that the complainant has not amended his Bill of Complaint, or plead further in this cause. It is therefore ordered, adjudged and decreed that said Bill of Complaint be and the same is hereby dismissed for the want of prosecution. This 17th of July 1943.

A. W. Hare
Judge

WILEY V. HAMILTON,

Complainant

VS.

STATE OF ALABAMA and
Augustine Meaher, Jr., as
Executor under the last
Will and Testament of
Augustine Meaher, Deceased,
and HELEN R. MEAHER, as
Executrix and Trustee under
the last will and testament
of Augustine Meaher, Deceased,

Respondents.

IN THE

CIRCUIT COURT OF BALDWIN COUNTY

ALABAMA

IN EQUITY

NO. 820

This matter coming on for hearing, and it appearing to the Court that on June 2, 1942, the respondents filed their demurrer to the Bill of Complaint, which demurrer was submitted to the Court, and on the 29th day of April, 1943, the Courts sustained said demurrer to the Bill of Complaint and gave the complainant thirty days in which to amend his Bill of Complaint, if he saw fit to do so, and it appearing to the Court that the complainant has not amended his Bill of Complaint, or plead further in this cause. It is therefore ordered, adjudged and decreed that said Bill of Complaint be and the same is hereby dismissed for the want of prosecution. This 17th day of July, 1943.

F. W. Hare
JUDGE

I, R. S. Duck, Register of the Circuit Court of Baldwin County, Alabama, do hereby certify that the foregoing is a correct copy of the original decree rendered by the Judge of the Circuit Court in the above stated cause, which said decree is on file and enrolled in my office.

Witness my hand and seal this 11th day of November, 1943.

Register of Circuit Court,
in Equity.

WILEY V. HAMILTON,

Complainant,

VS.

STATE OF ALABAMA AND
AUGUSTINE MEAHER, JR., as
Executor under the last will
and testament of Augustine
Meaher, Deceased, AND HELEN
R. MEAHER, as Executrix and
Trustee under the last will
and testament of Augustine
Meaher, Deceased,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

No. _____.

This cause coming on for hearing is submitted upon the Demurrer to the Complaint of Complainant and the same being understood by the Court, the Court is of the opinion that the Demurrer is well taken.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Demurrer to the Complaint be and the same is hereby sustained. It is further ORDERED, ADJUDGED, AND DECREED that the Complainant have thirty days within which to file any Amendment that he may see fit to said Complaint.

DATED this 29th day of April, 1943.



Judge.

WILEY V. HAMILTON,
Complainant

VS.

STATE OF ALABAMA and
AUGUSTINE MEAHER, JR., As
Executor under the last
Will and Testament of
Augustine Meaher, Deceased,
and HELEN R. MEAHER, as
Executrix and Trustee under
the last will and testament
of Augustine Meaher, Deceased,

Respondents.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

IN EQUITY

NO. 820

Comes the respondents in the above styled cause, separately and severally, and demur to the original bill of complaint filed therein, and as separate and several grounds of said demurrer say:

1. There is no equity in the bill.
2. It affirmatively appears from said bill that a final decree was rendered by this Court in said cause wherein the respondents herein were the Complainants, and the complainant herein was the respondent, on February 2, 1942, more than thirty days from the date of the filing hereof.
3. It affirmatively appears from said bill that a final decree was rendered by this Court in said cause wherein the Respondents herein were the complainants, and the complainant herein was the Respondent, on February 2, 1942, more than thirty days from the date of the filing hereof, and is not subject to being cancelled of record, as prayed in said bill.
4. It affirmatively appears from said bill that the final decree in said cause wherein the Respondents herein were the complainants and the Complainant herein was the respondent, has become final as to the rights of the complainant herein.
5. It affirmatively appears from said bill that the Complainant herein is barred by laches.

6. It affirmatively appears from said bill that the Complainant herein has slept on his alleged rights.

7. Because equity aids the diligent, and not those who sleep on their rights.

8. Because leave of the Court was not first obtained before said bill was filed.

9. Because from aught that appears from said bill, the Complainant herein is in contempt of this court for failing to comply with said final decree rendered February 2, 1942.

10. Because said bill fails to aver facts sufficient to show that the complainant herein has a meritorious defense to said cause wherein final judgment was rendered on February 2, 1942.

11. Because the allegation of said bill that the complainant herein" has a good defense to the action of the said Plaintiffs in said suit" is a mere conclusion of the pleader.

12. Because said bill fails to aver facts sufficient to show that the complainant herein was prevented from making his defense, if any, in said cause wherein final judgment was rendered on February 2, 1942, by surprise, accident, mistake or fraud, without any fault on his part.

13. Because said bill fails to aver facts sufficient to show that the complainant herein was prevented from making his defense, if any, in said cause wherein final judgment was rendered on February 2, 1942, by surprise.

14. Because said bill fails to aver facts sufficient to show that the complainant herein was prevented from making his defense, if any, in said cause wherein final judgment was rendered on February 2, 1942 by accident.

15. Because said bill fails to aver facts sufficient to show that the complainant herein was prevented from making his defense, if any, in said cause wherein final judgment was rendered on February 2, 1942, by mistake.

16. Because said bill fails to aver facts sufficient to show that the Complainant herein was prevented from making his defense, if any, in said cause wherein final judgment was rendered on February 2, 1942, by fraud.

17. Because said bill fails to aver facts sufficient to show that the complainant herein was prevented from making his defense, if any, in said cause wherein final judgment was rendered on February 2, 1942, without any fault on his part.

18. Because it affirmatively appears from said bill that the failure of the complainant herein to interpose an answer in said cause wherein final judgment was rendered on February 2, 1942, was due to the negligence of the Complainant herein, or his Attorney.

19. Because it affirmatively appears that the complainant herein received every notice to which he was entitled by law of the proceedings in said cause wherein a final judgment was rendered on February 2, 1942.

20. Because the allegation of said bill that the complainant herein ". . . was prevented from making his defense by surprise, accident, mistake or fraud, without any fault on his part . . ." is a mere conclusion of the pleader.

21. Because it affirmatively appears from the allegations of said bill that the complainant herein, and his Attorney, knew or should have known, that said cause wherein a final judgment was rendered on February 2, 1942, was not the same cause as the one wherein Augustine Meaher was an appellant from a judgment rendered by Justice of the Peace Howard Gaillard, of Daphne, Alabama.

22. Because for aught that appears from said bill, the complainant herein has failed to comply with the final judgment rendered in said cause on February 2, 1942, and the complainant, therefore, does not come into equity with clean hands.

23. Because said bill refers to said final decree entered on February 2, 1942, and the contents of said decree are not set out verbatim, nor is the legal effect thereof stated.

24. Because said bill fails to aver the nature of the proceedings in said cause which resulted in said final decree on February 2, 1942.

25. Because the record in said cause which resulted in a final decree on February 2, 1942, is not made a part of said bill.

26. That the complainant is endeavoring to institute a suit against the State of Alabama which is clearly in violation of the Constitution.

27. That the complainant is not authorized to maintain this suit against the State of Alabama for the reason that the Constitution prohibits the institution of a suit against the State.

Chas B. Kendall, Jr.

C. L. Hybart
Solicitors for Respondents

Of Counsel:

Messrs. Hybart & Chason,
Bay Minette, Alabama.

Smith, Hand & Arendall,
Mobile, Alabama.

ORDER.

WILEY V. HAMILTON,

Plaintiff,

vs.

STATE OF ALABAMA AND AUGUSTINE
NEAHER, JR., as Executrix under
the last will and testament
of Augustine Neaher, Deceased,
AND HILTON R. NEAHER, as Exec-
utrix and Trustee under the last
will and testament of AUGUSTINE
NEAHER, Deceased.

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

FILED APRIL _____, 1943.

Register.

850

820

WILEY V. HAMILTON,
Complainant

VS.

STATE OF ALABAMA and
AUGUSTINE MEAHER, JR., as
Executor under the last
Will and Testament of
Augustine Meaher, Deceased,
and Helen R. Meaher, as
Executrix and Trustee under
the last will and testament
of Augustine Meaher, Deceased.

Respondents.

FINAL DECREE

Filed 1/20/43

P. S. Dreck,
ms.
3-164

81-307-B

Filed 1/20/43

820

Journal

Filed June 3, 1943
Bob Beck
Byquist

The State Of Alabama }
Baldwin County

Circuit Court of Baldwin County, In Equity.

To Any Sheriff of the State of Alabama—GREETINGS:

WE COMMAND YOU, That you summon

State of Alabama and Augustine Meaher, Jr., as Executor under the last will and testament of Augustine Meaher, Deceased, and Helen R. Meaher, as Executrix and Trustee under the last will and testament of Augustine Meaher, Deceased

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

Wiley V. Hamilton

against said State of Alabama and Augustine Meaher, Deceased, and Helen H. Meaher, as Executrix and Trustee under the last will and Testament of Augustine Meaher, Deceased.

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 15th day of May, 1942

R. S. Duck [Signature], Register

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

The State Of Alabama }
Baldwin County

Circuit Court of Baldwin County, In Equity.

To Any Sheriff of the State of Alabama—GREETINGS:

WE COMMAND YOU, That you summon State of Alabama and Augustine Meaher, Jr.,
as Executor under the last will and testament of Augustine Meaher, Deceased, and
Helen R. Meaher, as Executrix and Trustee under the last will and testament of
Augustine Meaher, Deceased.

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

WILEY V. HAMILTON

against said State of Alabama and Augustine Meaher, Deceased, and Helen R. Meaher,
as Executrix and Trustee under the last will and testament of Augustine
Meaher, Deceased.

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 15th day of
May, 1942.

R. S. Duck Register

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

Serve On _____

Circuit Court of Baldwin County

IN EQUITY

No. 82 D

Summons

VS.

**THE STATE OF ALABAMA,
Baldwin County**

Received in office this _____

day of _____, 194 _____

Sheriff:

Executed this _____ day of _____

194 _____

by leaving a copy of the Summons with _____

Defendant

Sheriff

By _____

Deputy Sheriff

Solicitor for Complainant

Oliver M. Bann

Recorded in Vol. _____ Page _____

Serve On _____

Circuit Court of Baldwin County

IN EQUITY

No. 829

Summons

Wiley V. Hamilton

VS.

STATE OF ALABAMA and AUGUSTINE MEAHER, JR., as Executor under the last will and Testament of AUGUSTINE MEAHER, Deceased and HELEN R. MEAHER, AS Executrix and Trustee under the last will and Testament of AUGUSTINE MEAHER Deceased.

Deceased and HELEN R. MEAHER, AS Executrix and Trustee under the last will and Testament of AUGUSTINE MEAHER Deceased.

Deceased.

ORVIS W. BROWN Solicitor for Complainant

Recorded in Vol. _____ Page _____

THE STATE OF ALABAMA,

Baldwin County

Received in office this MAY 20 1943

day of _____ 194

G. A. MOSLEY, Sheriff

Sheriff.

Executed this 7^o day of _____, 194

May, 194

by leaving a copy of the Summons with

J. J. Lawson, Attorney

Attorney for State of Ala

Defendant

J. A. Mealey Sheriff

By *J v H* Deputy Sheriff

Pass of Complainant

BILL OF COMPLAINT:

WILEY V. HAMILTON,
COMPLAINANT,

VS.

STATE OF ALABAMA and AUGUSTINE
MEASHER, JR. as Executor under the
last will and testament of Augu-
stine Measher, Deceased, and HELEN
R. MEASHER as Executrix and Trustee
under the last will and testament
of Augustine Measher, Deceased ,
RESPONDENTS.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA,
IN EQUITY: # _____

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

Comes your Complainant in the above styled cause and shows
unto your Honor as follows;

1; The complainant is a resident of Baldwin County, Alabama,
and has been for more then five years next preceeding the filing of this
Bill of Complaint, and over the age of twenty one years. The Respondent,
State of Alabama is a sovereign State of the United States of American.
The Respondents Augustine Measher, Jr. and Helen R. Measher are and have been
for more than 3 years immediately preceding the filing of this bill of
complaint, resident citizens of Mobile County, Alabama, over the age of
twenty one years, and were duly appointed by the Probate Court of Mobile
County, Alabama, to act as executor and executrix respectfively under the
lastt will and testament of Augustine Measher, deceased, I am informed and
believe to be true and correct.

2; Your Complainant shows further that he was the Respondent
in a certion Chancery Suit styled;

"State of Alabama, and Augustine Measher, Jr.
as Executor under the last will and testament
of Augustine Measher, Deceased, and Helen R.
Measher as Executrix and Trustee under the last
will and testament of Augustine Measher, deceased.

Vs.

Wiley V. Hamilton. "

which was a proceedure to enjoin Your complainant from operating a
fishing camp, maintaining his wharf's and renting boats, and further to
force the removing of his home which is located in the waters of Jacks
Bayou, and to further force ~~RESEEN~~ your Complainant to prevent any
person from parking his or her automobile along the public highway
in this vicinity.

Your complainant shows further that he was served with a copy of the interrogatories in connection with the said Bill of Complaint and he believes that he received a copy of the Bill of Complaint at the same time. Upon receipt of the interrogatories your complainant immediately proceeded to Mobile, Alabama, to the office of Jere Austill, Attorney at Law, who after studying the papers proceeded to prepare the necessary answers which I signed, and returned to the Clerk of the Circuit Court of Bay Minette, Alabama, to be filed and which were filed. Your Complainant shows further that in February of 1938 a suit of this nature by the same parties or that is by Augustine Meaher, was filed in the Justice Court of Justice Howard Gaillard, of Daphne, Alabama, and a decision in favor of your Complainant was there rendered and the said Augustine Meaher immediately filed notice and did take an appeal to the Circuit Court of Baldwin County, Alabama, and that when the interrogatories above referred to were presented to Attorney Jere Austill, he was of the opinion that it was the same case which had been appealed, as he did not have any notice of the case having been disposed of, and therefore by misapprehension and deceit was prevented from filing answer to the Bill of Complaint in this new suit.

3; Your Complainant shows further unto your Honor that he is not guilty of any laches in failing to file an answer, but on the contrary he immediately secured the services of a reliable attorney to file all necessary papers, and that by trickery, want of notice, or knowledge of the pendency of suit the Complainant was prevented from filing answer and did not know of the new suit pending until served with copy of the final decree, which was after the 30 days for Motion for Rehearing had expired, the Decree having been obtained on February 2nd, 1942 and notice served on me March 9th, 1942. Your Complainant was prevented from making motion for new trial as he was not informed of the Judgment having been issued until this time had expired, therefore the Judgment of the Court at this time stands against your Complainant, therefore your Complainant was prevented from making his defense by surprise, accident, mistake, or fraud, without any fault on his part, and he has at all times been ready, willing and anxious to defend any suit concerning his possession of the lands referred to in said suit.

And that he has a good defense to the action of the said plaintiffs in said suit and if allowed to present the same I do not see how that any injustice can be done by setting aside ~~said~~ default and ~~per~~mitting me to defend the same on its merits.

PRAYER FOR PROCESS:

The premises considered, complainants pray that the Court cause due process to issue, in accordance with the rules and practice of this court, to said respondents, directing them to appear before the court and plead, answer or demur hereto within the time allowed by law.

PRAYER FOR RELIEF:

WHEREFORE the premises considered, complainant prays that after the hearing hereof, this honorable court will set aside the Default Judgment entered on the 2nd day of February, 1942, which said Judgment was in favor of, " State of Alabama, and Augustine Meaher, Jr., as Executor under the last will and Testament of Augustine Meaher, Deceased, and Helen R. Meaher as Executrix and Trustee under the last will and testament of Augustine Meaher, deceased, and against your Complainant Wiley V. Hamilton, and will order and direct that the same be cancelled of record in the Office of the Judge of Probate Court of Baldwin County, Alabama, and that the case now pending in the Chancery Court styled " Augustine Meaher, Plaintiff, Appellant, vs. Wiley V. Hamilton, defendant, be consolidated and tried as one case as the same property and same questions and same parties are involved, and that execution be stayed until this case can be finally disposed of, and Complainant prays for such other, further or different relief as this honorable court, in equity and good conscience may deem meet, the premises considered, as complainant will ever pray.

Wiley V. Hamilton
Complainant.

Orvis M. Brown
SOLICITOR FOR COMPLAINANT.

State of Alabama.
County of Baldwin

Personally appeared before me, Orvis M. Brown, a Notary Public in and for said County and State, Wiley V. Hamilton, who upon oath deposes and says; That he is the Complainant in the forgoing Bill of Complaint, in the above styled cause, and therefore does make this his oath; that the facts stated in the foregoing Bill of Complaint are true to his knowledge; that he is informed as to the facts stated upon information and belief as stated therein and verily believes, and so states, that the same are true.

Orvis M. Brown Notary Public. *Wiley V. Hamilton* Complainant.
Sworn to and subscribed to before me
a Notary Public, in and for said County
this 14th day of May, 1942.

ORVIS M. BROWN
NOTARY PUBLIC
BALDWIN COUNTY, ALABAMA

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

To Any Sheriff of the State of Alabama—GREETINGS:

WE COMMAND YOU, That you summon State of Alabama and Augustine Meaher, Jr.,
as Executor under the last will and testament of Augustine Meaher, Deceased, and
Helen R. Meaher, as Executrix and Trustee under the last will and testament of
Augustine Meaher, Deceased.

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

WILEY V. HAMILTON

against said State of Alabama and Augustine Meaher, Deceased, and Helen R. Meaher,
as Executrix and Trustee under the last will and testament of Augustine
Meaher, Deceased.

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 15th day of
May, 194 2.

R. S. Duck, Register

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

BILL OF COMPLAINT:

WILEY V. HAMILTON,
COMPLAINANT,

VS.

STATE OF ALABAMA and AUGUSTINE
MEASER, JR. as Executor under the
last will and testament of Augu-
stine Measer, Deceased, and HELEN
R. MEASER as Executrix and Trustee
under the last will and testament
of Augustine Measer, Deceased,
RESPONDENTS.

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

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

Comes your Complainant in the above styled cause and shows
unto your Honor as follows:

1: The complainant is a resident of Baldwin County, Alabama,
and has been for more than five years next preceeding the filing of this
Bill of Complaint, and over the age of twenty one years. The Respondent,
State of Alabama is a sovereign State of the United States of American.
The Respondents Augustine Measer, Jr. and Helen R. Measer are and have been
for more than 3 years immediately preceeding the filing of this bill of
complaint, resident citizens of Mobile County, Alabama, over the age of
twenty one years, and were duly appointed by the Probate Court of Mobile
County, Alabama, to act as executor and executrix respectively under the
last will and testament of Augustine Measer, deceased, I am informed and
believe to be true and correct.

2: Your Complainant shows further that he was the Respondent
in a certain Chancery Suit styled:

"State of Alabama, and Augustine Measer, Jr.
as Executor under the last will and testament
of Augustine Measer, Deceased, and Helen R.
Measer as Executrix and Trustee under the last
will and testament of Augustine Measer, deceased.

VS.

Wiley V. Hamilton. "

which was a procedure to enjoin the complainant from operating a
fishing camp, maintaining his wharf's and renting boats, and further to
force the removing of his house which is located in the waters of Jacks
Bayou, and to further force the complainant to prevent any
person from parking his or her automobile along the public highway
in this vicinity.

Your complainant shows further that he was served with a copy of the interrogatories in connection with the said Bill of Complaint and he believes that he received a copy of the Bill of Complaint at the same time. Upon receipt of the interrogatories your complainant immediately proceeded to Mobile, Alabama, to the office of Jere Austill, Attorney at law, who after studying the papers proceeded to prepare the necessary answers which I signed, and returned to the Clerk of the Circuit Court of Bay Minette, Alabama, to be filed and which were filed. Your Complainant shows further that in February of 1942 a suit of this nature by the same parties that is by Augustine Mosher, was filed in the Justice Court of Justice Howard Galliard, of Daphne, Alabama, and a decision in favor of your Complainant was there rendered and the said Augustine Mosher immediately filed notice and did take an appeal to the Circuit Court of Baldwin County, Alabama, and that when the interrogatories above referred to were presented to Attorney Jere Austill, he was of the opinion that it was the same case which had been appealed, as he did not have any notice of the case having been disposed of, and therefore by misapprehension and deceit was prevented from filing answer to the Bill of Complaint in this new suit.

5; Your Complainant shows further unto your Honor that he is not guilty of any laches in failing to file an answer, but on the contrary he immediately secured the services of a reliable attorney to file all necessary papers, and that by trickery, want of notice, or knowledge of the pendency of suit the Complainant was prevented from filing answer and did not know of the new suit pending until served with copy of the final decree, which was after the 30 days for Motion for Rehearing had expired, the Decree having been obtained on February 2nd, 1942 and notice served on me March 9th, 1942. Your Complainant was prevented from making motion for new trial as he was not informed of the Judgment having been issued until this time had expired, therefore the Judgment of the Court at this time stands against your Complainant, therefore your Complainant was prevented from making his defense by surprise, accident, mistake, or fraud, without any fault on his part, and he has at all times been ready, willing and anxious to defend any suit concerning his possession of the lands referred to in said suit.

And that he has a good defense to the action of the said plaintiffs in said suit and if allowed to present the same I do not see how that any injustice can be done by setting aside said default and permitting me to defend the same on its merits.

PRAYER FOR PROCESS:

The premises considered, complainants pray that the Court cause due process to issue, in accordance with the rules and practice of this court, to said respondents, directing them to appear before the court and plead, answer or demur hereto within the time allowed by law.

PRAYER FOR RELIEF:

WHEREFORE the premises considered, complainants prays that after the hearing hereof, this honorable court will set aside the Default Judgment entered on the 2nd day of February, 1942, which said Judgment was in favor of, " State of Alabama, and Augustine Mecher, Jr., as Executor under the last will and Testament of Augustine Mecher, Deceased, and Helen B. Mecher as Executrix and Trustee under the last will and testament of Augustine Mecher, deceased, and against your Complainant Wiley V. Hamilton, and will order and direct that the same be cancelled of record in the Office of the Judge of Probate Court of Baldwin County, Alabama, and that the case now pending in the Chancery Court styled " Augustine Mecher, Plaintiff, Appellant, vs. Wiley V. Hamilton, defendant, be consolidated and tried as one case as the same property and same questions and same parties are involved, and that execution be stayed until this case can be finally disposed of, and Complainant prays for such other, further or different relief as this honorable court, in equity and good conscience may deem meet, the premises considered, as complainant will ever pray.

Wiley V. Hamilton
Complainant.
Wm. M. Brown
SOLICITOR FOR COMPLAINANT.

State of Alabama.
County of Baldwin

Personally appeared before me, Crvis N. Brown, a Notary Public in and for said County and State, Wiley V. Hamilton, who upon oath deposes and says: That he is the Complainant in the foregoing Bill of Complaint, in the above styled cause, and therefore does make this his oath; that the facts stated in the foregoing Bill of Complaint are true to his knowledge; that he is informed as to the facts stated upon information and belief as stated therein and verily believes, and so states, that the same are true.

Sworn to and subscribed to before me Wiley V. Hamilton
a Notary Public, in and for said County
this 14th day of May, 1942. Wm. M. Brown N. P.

Notary Public, Alabama
ATTESTED BY ME
CRVIS N. BROWN

BILL OF COMPLAINT

WILEY V. HAMILTON
Complainant

VS

STATE OF ALABAMA and AUGUSTINE
MEASHER, JR. as Executor under the)
last will and testament of AUGU*)
STINE MEASHER, Deceased, and HELEN R. MEASHER IN THE CIRCUIT COURT OF BALDWIN)
MEASHER as Executrix and Trustee)
under the last will and testament) COUNTY, ALABAMA
of AUGUSTINE MEASHER, DECEASED,)
Respondents.) IN EQUITY NO. 820

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

Comes your Complainant in the above styled cause and shows unto your Honor
as follows:

1. The Complainant is a resident of Baldwin County, Alabama, and has been
for more than five years next preceeding the filing of this Bill of Complaint
and over the age of twenty-one years, The Respondent, State of Alabama is
a sovereign State of the United States of American.

The Respondents Augustine Meaher, Jr. and Helen R. Meaher are and have been
for more that 3 years immediately preceeding the filing of this Bill of
Complaint, resident citizens of Mobile County, Alabama, over the age of
twenty-one years, and were duly appointed by the Probate Court of Mobile
County, Alabama, to act as executor and executrix respectively under
the last will and testament of Augustine Meaher, deceased, I am informed
and believe to be true and correct.

2. Your Complainant shows further that he was the Respondent in a certian
Chancery Suit styled:

"State of Alabama, and Augustine Meaher, jr.,
as Executor under the last will and testament
of Augustine Meaher, Deceased, and Helen R. Meaher
as Executrix and Trustee under the last will and
Testament of Augustine Meaher, deceased.

VS

Wiley V. Hamilton."

which was a proceedure to enjoin your Complainant from operating a fish-
ing camp, maintaining his wharf's and renting boats, and further to force
the removing of his home which is located in the waters of Jacks Bayou,
and to further force your Complainant to prevent any person from parking
his or her automobile along the public highway of this vicinity.

Your Complainant shows further that he was served with a copy of the interrogatories in connection with the said Bill of Complaint and he believes that he received a copy of the Bill of Complaint at the same time. Upon receipt of the interrogatories your Complainant immediately proceeded to Mobile, Alabama, to the office of Jere Austill, Attorney at Law, who after studying the papers proceeded to prepare the necessary answers which I signed, and returned to the Clerk of the Circuit Court of Bay Minette, Alabama, to be filed and which were filed. Your Complainant shows further that in February of 1938 a suit of this nature by the same party, or that is by Augustine Meaher, was filed in the Justice Court of Justice Howard Gaillard, of Daphne, Alabama, and a decision in favor of your Complainant was there rendered and the said Augustine Meaher immediately filed notice and did take an appeal to the Circuit Court of Baldwin County, Alabama, and that when the interrogatories above referred to were presented to Attorney Jere Austill, he was of the opinion that it was the same case which had been appealed, as he did not have any notice of the case having been disposed of, and therefore by misapprehension and deceit was prevented from filing answer to the Bill of Complaint in this new suit.

3. Your Complainant shows further unto your Honor that he is not guilty of any laches in failing to file an answer, but on the contrary he immediately secured the services of a reliable attorney to file all necessary papers, and that by trickery, want of notice, or knowledge of the pendency of suit the Complainant was prevented from filing answer and did not know of the new suit pending until served with copy of the final decree, which was after the 30 days for Motion for Re-hearing had expired, the Decree having been obtained on February 2nd, 1942 and notice served on me March 9th, 1942. Your Complainant was prevented from making Motion for new trial as he was not informed of the Judgment having been issued until this time had expired, therefore the Judgment of the Court at this time stands against your Complainant, therefore your Complainant was prevented from making his defense by surprise, accident, mistake, or fraud, without any fault on his part, and he has at all times been ready, willing and anxious to defend any suit concerning his possession of the lands referred to in said suit.

And that he has a good defense to the action of the said Plaintiffs in said suit and if allowed to present the same I do not see how that any injustice can be done by setting aside said default and permitting me to defend the same on its merits.

PRAYER FOR PROCESS

The premises considered, Complainants pray that the Court cause due process to issue, in accordance with the rules and practice of this court, to said Respondents, directing them to appear before the court and plead, answer or demur hereto within the time allowed by law.

PRAYER FOR RELIEF

WHEREFORE the premises considered, Complainant prays that after the hearing hereof, this honorable court will set aside the Default Judgment entered on the 2nd day of February, 1942, which said Judgment was in favor of, "State of Alabama, and Augustine Meaher, Jr., as Executor under the last will and Testament of Augustine Meaher, Deceased, and Helen R. Meaher as Executrix and Trustee under the last will and testament of Augustine Meaher, deceased, and against your Complainant Wiley V. Hamilton, and will order and direct that the same be cancelled of record in the Office of the Judge of Probate Court of Baldwin County, Alabama, and that the case now pending in the Chancery Court styled" Augustine Meaher, Plaintiff, Appellant, vs. Wiley V. Hamilton, Defendant, be consolidated and tried as one case as the same property and same questions and same parties are involved, and that execution be stayed until this case can be finally disposed of, and Complainant prays for such other further or different relief as this honorable court, in equity and good conscience may deem meet, the premises considered, as Complainant will ever pray.

WILEY H. HAMILTON
Complainant

ORVIS M. BROWN
Solicitor for Complainant

State of Alabama

County of Baldwin

Personally appeared before me, Orvis M. Brown, a Notary Public in and for said county and State, Wiley V. Hamilton, who upon oath desposes and says: That he is the Complainant in the foregoing Bill of Complaint, in the above styled cause, and therefore does make this his oath; that the facts stated in the foregoing Bill of Complaint are true to his knowledge; that he is informed as to the facts stated upon information and belief as stated therein and verily believes, and so states, that the same are true;

Sworn to and subscribed to before me in and for said county
a Notary Public, in and for said county this 14th day of May, 1942
Orvis M. Brown

WILEY V. HAMILTON, Complainant