

942

JAMES R. DRUHAN,

Complainant.

vs.

The lands described in the bill of:  
complaint, and

vs.

CHARLES G. CLARK, ET AL,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
ALABAMA.

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

The following testimony was taken before Hilda S. Rutherford as Commissioner, on the 20th day of October, 1943, at 11:00 A. M., in the office of Vickers and Leigh, Merchants National Bank Building, Mobile, Alabama.

Honorable Alex Howard, Solicitor for the Respondent, Margaret E. Howard, and Marion R. Vickers, Solicitor for the Complainant, were present. Notice of the taking of testimony was waived by the Solicitors for both parties, and it was agreed between the Solicitors for the Complainant and the Respondent Margaret E. Howard that the signing of the testimony by each of the witnesses would be and is hereby waived.

Mr. James R. Druhan, a witness for Complainant, having been first duly sworn, testified on direct examination by Mr. Vickers as follows:

My name is James R. Druhan. I am the Complainant in the bill to quiet title filed in the Circuit Court of Baldwin County, Alabama, against a portion of Lot 3 of the Caleb Dana Tract of land in Section 6, Township 7 South, Range 2 East, and more fully described in the bill of complaint, and against Charles G. Clark et al. I am over the age of twenty-one years and live in Mobile County, Alabama, and have been living in said county and state all of my life.

Handwritten note on the left margin: "Handwritten note on the left margin: 'The bill of complaint was amended a portion of Lot 3 of the Caleb Dana Tract of land in Section 6, Township 7 South, Range 2 East, and more fully described in the bill of complaint, and against Charles G. Clark et al.'"

My father, Mr. James Druhan, owned a summer home at Zundels in Baldwin County, Alabama, which was located west of the public highway that runs from Point Clear to Zundels. He owned or claimed to own the land more fully described in the bill of complaint, which lies east of the road and which comprises about five and one-half acres.

Q. How old are you, Mr. Druhan?

A. I am thirty-seven years old.

Q. When did your father first acquire title to the property used as his summer home which lies west of the road?

(Mr. Howard: Solicitor for Respondent objects to the question as calling for a conclusion of law).

A. About 1910.

Mr. Robert J. Pierce was living on the property at that time, and there was an old house on it. No part of said property was under fence.

Some two or three months after my father built the summer home on the property he acquired a mortgage on the property east of the road from Mr. Pierce and in payment of the mortgage he took possession of the property. (The same was then fenced in,) the old house was torn down, the land cleared and pecan trees planted thereon. For several years we took proper care of the pecan trees, and while my father was living he kept the property cleared and planted in crops and kept the fence in good repair.

Q. Mr. Druhan, you say your father had a mortgage on the property from Mr. Robert Pierce. Did Pierce turn possession of the property over to him in payment of the mortgage?

(Mr. Howard: Solicitor for Respondent objects. The question is leading).

A. My father took possession of the property in payment of the mortgage.

This mortgage was never recorded, and I have searched all of my father's papers in an effort to find it without success.

I don't remember the exact date the summer home was built but I do remember that it was the same year in which my father acquired the property west of the road, and it was some two or three years after the summer home was built that he took possession of the property east of the road from Pierce.

Some of the pecan trees are still standing, but brush and small trees and vines have grown up all around them. Some portions of the fences are down and other portions are still intact.

When my father died, his will was duly probated in Mobile County, Alabama, and I subsequently acquired the interest of all of the devisees under his will to his property in Baldwin County.

I never knew a Charles G. Clark and the first time I ever heard of him was when his name appeared in the abstract of title at the time I purchased the property about a year or eighteen months ago. I made an effort to locate Mr. Charles G. Clark by inquiring of the local residents of the vicinity in which the property is located. Among the persons contacted in this regard were Mr. Caleb Dana, Captain Joseph Pose and members of my own family. None of these people ever knew a Mr. Charles G. Clark or had ever heard of him.

Charles G. Clark has never been in possession of the property described in the bill of complaint within the last twenty years. No one, other than my father and his successors in title, have been in possession of said property or have manifested any ownership in it in any way since Mr. Pierce left the property.

P 2  
The house was torn down by my father and no one every made any objections, and no one every opposed his planting pecan trees and crops on the property (and having the same fenced in), and no one has ever made any claim to this property at any time other than Mr. Robert Pierce.

On cross-examination by Mr. Howard, the witness testified as follows:

I never saw the mortgage from Mr. Pierce to my father and I don't know the date on which it was made. I don't know how much the loan was, or whether the mortgage was executed before a notary public, or whether it contained a homestead acknowledgment.

The last time we gathered pecans from the trees on this property was in about 1925, at which time we gathered about a bushel. I don't think that any of the trees left on said property are bearing.

The front part of the fence is down. The posts are there but the wire is down. The fence on the north boundary is still standing and was fairly well intact the last time I looked at it, which was during this past summer.

E  
I forget the exact date on which the old house on this property was torn down, but I think it was about 1915, and we have never rented this land. My father planted pecan trees on said property and between the pecan trees he planted a vegetable garden. The last crop was planted in about 1923, I think, and since that time the property hasn't been used in any way at all except for garbage disposal.

I never knew of any transfer of this property by Mr. Pierce to Mr. Charles C. Clark and, to my knowledge, neither did my father. As far as I know, there was no objection to any such transaction.

Every summer I spend three months at the summer home located on the property west of the road. My father died in 1931, and since that time I have cut small trees from the property east of the road for use as firewood and wharf posts.

I do not claim to have any deed to the property except the deed to me from the devisees under my father's will, which was executed about a year and a half ago. All of the property was devised by will from my father to my mother. This property was not specifically mentioned in said deed--no mention of any particular property was made.

I first became interested in said property--as far as making a claim to it was concerned and putting said claim in the hands of counsel--when I purchased it from the other members of my family about a year and a half ago.

The Tax Assessor has always made up our assessment for us and we paid all the taxes for which the Tax Collector sent us a bill, which included the property on which the summer home is located west of the road, and we thought it included the property east of the road also. When I took possession of the property west of the road from the estate I found out then that the taxes had not been paid on the property east of the road.

Q. It is a fact of record in the courthouse, is it not, that the taxes on this property, as far as the record shows, have never been paid by any member of your family or its claimed successors in title?

A. I haven't checked that.

Q. None of the Druhan family have ever paid any taxes on the property east of the road.

A. I don't agree to that.

Q. As far as you know have you, your father or anybody else ever paid any taxes on the property?

A. I just know that we paid all of the taxes for which we got a bill.

Q. In Alabama you assess your property and you get a bill on whatever you assess. I will ask you if you or your father or any of your family ever assessed the property east of the highway?

A. Not to my knowledge.

I don't know why my father never recorded the mortgage from Pierce, and I don't know how the property was described therein. I first began a search for this mortgage about a year and a half ago. I thought the entire property was described in the deed to the property west of the road, and when I was buying the property from the estate I understood that I was buying the entire property. Then it developed that the property east of the highway was not included, and the purpose for making inquiry for Charles G. Clark was to try to contact the former owners of the property and obtain the record title to it.

My father built a summer home on the bay-front property around 1910. He then took possession of the property east of the highway and planted it in pecan trees (and fenced it in). He subsequently bought a piece of property in front of this property from the McNamaras. In 1923 the original summer home burned and the property was sold. We retained possession of the property purchased from the McNamaras, and the property east of the road.

This latter property is in the state that any property would be if it had not been cleared for several years. It is overgrown with underbrush, briars, vines and small trees. The last time it was cleared, to my knowledge, was when the last crops were planted--in 1923.

On re-direct examination by Mr. Vickers, the witness testified as follows:

Neither I, nor any member of my family, ever prepared the descriptions which went into any assessment that was made. The assessments were prepared by the Tax Assessor and forwarded to us for signature. That is, in recent years this has been the custom, but up until the time of my father's death I didn't know how the assessments were made.

Prior to the time I had the abstract of title examined in preparing to purchase the property from the estate about a year and a half ago I did not know that anyone was making or asserting any claim to the property described in the bill of complaint and that was the first time I knew that Miss Margaret Howard asserted any claim to it and that was the first time I knew that Charles G. Clark had any record title to it.

On re-cross-examination by Mr. Howard, the witness testified as follows:

In the meantime I did know that there had been a mortgage on this property that had been lost and that had not been recorded.

Q. You had the knowledge that there was a mortgage and you also had knowledge that Pierce had not paid the loan?

A. No.

Q. Did you know that you were claiming property to which you had no paper title?

A. No.

Q. Did you have any knowledge whatever as to whether your father would have a deed from Pierce?

A. No.

Q. How do you know now that he didn't have a deed to it?

A. I was not able to find one and it was not recorded.

Q. Your conclusion is, then, that he didn't have any deed?

A. Yes.

I know that my father wouldn't take possession of the property without some claim to it. I have no personal knowledge of the surrender of possession to my father, nor of the conversation between him and Mr. Pierce.

There is no suit pending to determine the title to, interest in, or right to possession of the property described in the bill of complaint.

The Respondent, Miss Margaret Howard, is a resident of Mobile County, Alabama, and is over the age of twenty-one.

Mr. Joseph M. Druhan, a witness for Complainant, having been first duly sworn, testified on direct examination by Mr. Vickers as follows:

My name is Joseph M. Druhan and I am a brother of James R. Druhan, the Complainant. My father was Mr. James Druhan and he owned a summer home at Sundels in Baldwin County, Alabama. I am familiar with the property on which Robert Pierce at one time lived and which was described in the bill of complaint in this case. I am forty years of age.

The basis on which my father claimed the Pierce property was a loan from him to Pierce. I don't know whether there was a mortgage, or any papers at all, in connection with the loan. I know that he was supposed to have given my father a mortgage, but I have never seen it and have never been able to find it.

Mr. Pierce was living on the property when I first remember it. I have no knowledge of any conversation between my father and Mr. Pierce. Pierce left the property and my father took possession of it because of the loan from my father to him.



It was in about 1914 or 1915, I think, that my father took possession of this property. He planted pecan trees and a vegetable garden on it, and put a fence around it.

I have inspected this property in recent years, and portions of the fence are down, but in some places the posts and wire are still intact.

I have never heard of any claim to this property other than by my father and his successors in title. It was always known as the "Druhan property."

On cross-examination by Mr. Howard, the witness testified as follows:

I did not hear the conversation between my father and Mr. Pierce as to the circumstances of the loan, and I don't know of my own knowledge how much the loan was. I never saw any mortgage, and I don't know how the loan was secured. I was quite young at the time, but I remember my father taking a sum of money out on the back lot with which to transact some business. I was not back there and do not know what actually transpired except that my father subsequently acquired the property. If I remember rightly, I was on the back porch when my father came in and told my mother that they had another farm and she could go ahead and plant it or do what she wanted to with it.

After my father's death we accepted whatever tax bill the Tax Collector sent us and assumed that we were paying taxes on all the property. No member of my family, as far as I know, ever knew that my father ever attempted to assess that particular piece of property. If it is a fact that my father never assessed the same for taxation, I don't know why he failed to do so.

Direct

Captain Joseph Pose, a witness for Complainant, having been first duly sworn, testified on direct examination by Mr. Vickers as follows:

My name is Joseph Pose and I live on the Greenough Boulevard, east of Zundels, in Baldwin County, Alabama. I was born in Baldwin County and have lived there all of my life. I am now sixty-one years of age. I am in the real estate business and have been engaged in this business for about eight or nine years.

I am familiar with the property east of the road and south of Zundels which is claimed by Mr. James R. Druhan. I was born within about a city block of this property, was raised there and lived there after I was married for a number of years. In 1916 I moved to Daphne, which is also in Baldwin County, and lived there eight years. I am presently living about two and one-half miles from the above mentioned property.

When I first remember the property it was owned by a Mrs. Krebs, then by Mr. August Krook, and then by Mr. Robert Pierce, and then by Mr. James Druhan. These are the only owners I ever remember. Mr. Druhan acquired the property prior to 1916, and I have never heard of anyone else claiming title to it other than his successors in title. I, of course, don't know whether Mr. Druhan had a deed to the property or how he acquired it. It is generally referred to as the "Druhan property." Mr. Druhan fenced the property and planted pecan trees there.

I inspected this property last year and the fence had fallen down in spots, but there were still some posts and wire on three sides. This property is bounded on the east by the Smalley, formerly the Nelson, property, which is fenced.

I do not know, and prior to last year, had never heard of either Mr. Charles C. Clark or Mr. Grover Clark. Within the last year, in an effort to locate these parties, I

talked to Mr. Otto Zundel, Mr. Arnold Brodbeck, Mr. Joseph Klumpp, Mr. Harry Parker, the surveyor and abstractor, who knows most of the people who own property in that part of Baldwin County, Mr. Jim Gaston at Fairhope, the Ladniers, and everyone I could think of who had lived there for a number of years, and no one had ever heard of Charles G. Clark. Mr. Otto Zundel and Mr. Arnold Brodbeck are in the general mercantile business there and have a store about one-half a mile from the property described in the bill of complaint. The Zundel and Brodbeck families have lived in Baldwin County for more than seventy-five years. I did not find any clue as to who Charles G. Clark might be.

This property, for the last twenty or twenty-five years, has been in the possession of the Druhans. I remember well, about four years ago, my wife and I were driving past there and I noticed Mr. Parker, the surveyor, and some other people--one of them was a lady from Mobile named Mrs. Nettles, whom I knew. I stopped my car and asked Mr. Parker what he was doing, and he said he was surveying the property. The lady then told me she was thinking about buying it.

I lived right down the road from this property and during Mr. Druhan's lifetime I passed by there several times when he out on the back lot directing the planting of trees and a vegetable garden.

During all of the time that I have been familiar with this property I have known or heard of anyone asserting any claim to it other than the Druhan family until about three years ago. At that time I heard that Mr. Robert Pierce had sold it to some man by the name of Clark.

The land south of this property is owned by the Haributts, and the property to the north of it belongs to Joe Doyle, I think. The boundaries of the Doyle, Haributt and Smiley properties are well known and defined.

*Who was this lady?  
Surveying was not made by Haributt*

Cross - Ex

On cross-examination by Mr. Howard, the witness testified as follows:

Q. You don't know that Mr. Druhan ever acquired the property except that you heard he had claimed it?

A. Yes.

Q. When did you see him working on it?

A. I can't remember, but it was prior to 1916 because I moved away from there in 1916 and stayed eight years.

I have never seen anybody exercise any act of possession since that time <sup>(1916)</sup> except the incident I mentioned before when Mr. Parker surveyed the property some four years ago. I have been over this property many times and the last time was about a year ago. The fences are in awfully bad shape, but the lines are all well defined. It's grown up with underbrush and no one lives there. I have never heard of the Druhans renting it to anyone.

I dig into the records quite a bit in my business, trying to find out locations of property, if it's for sale, names of owners, etc., and I have never known or heard of a deed conveying this property to Grover Clark. I happened to be searching the records in Bay Minette to a piece of land and ran into a deed on the records there from Grover Clark to Charles G. Clark.

In its present condition it would be physically impossible to take possession of this property until it is cleared away. It is overgrown with underbrush and has been in that condition for a good many years--I don't know whether it has been over twenty years or not.

I have no personal knowledge of any transfer that Pierce made to the Druhans. I didn't witness any such transfer and never saw any deed, and I don't know the circumstances under which it is claimed that Pierce surrendered possession to Mr. Druhan.

On re-direct examination by Mr. Vickers, the witness testified as follows:

I don't know of any property along the back road which runs from Point Clear to Zundels that has been rented. There is no market for the rental of such land unless it has a house thereon. I do know that Mr. Druhan planted a pecan orchard and a vegetable garden on the property described in the bill of complaint, and I do know that it has been under fence since about 1915 or 1916 and that no one, other than the Druhans, have ever asserted any claim to it that I know of.

On re-cross-examination by Mr. Howard, the witness testified as follows:

Mr. Druhan planted the vegetable garden prior to 1916, and as far as I know there has not been any vegetable garden planted since. There are some pecan trees left, but the underbrush has grown up so around them that they don't amount to anything.

Mr. Harry H. Parker, a witness for Complainant, having been first duly sworn, testified on direct examination by Mr. Vickers as follows:

My name is Harry H. Parker. I live in Fairhope in Baldwin County, Alabama, and have lived there since December 23, 1899. I am a surveyor and abstracter.

I am familiar with the property described in the bill of complaint in this cause which lies east of the public highway back of Zundels. My father, who was also a surveyor, surveyed this property and did the work there until about 1906. We operated a portable sawmill and lived within about a half-mile of this property from 1909 to 1916.

I do not remember who owned this property before Mr. Druhan, but I do know that since about 1914 it has been called the "Druhan property," but I don't know how long prior to this date he acquired possession of it.

Q. By what name has this property been known for the last twenty-five or thirty years?

(Mr. Howard: Solicitor for Respondent objects on the ground that the answer would be hearsay).

A. Ever since about 1914 I always knew it as the Druhan property.

Q. Did Mr. Druhan claim to own it at that time?

(Mr. Howard: Solicitor for Respondent objects on the ground that the answer would be hearsay).

A. Yes.

Q. Since 1914, and down to the present time, who has claimed to own the property?

(Mr. Howard: Solicitor for Respondent objects to the question on the ground that it is an attempt to prove the title by hearsay).

A. Mr. Druhan and the members of his family.

The property was fenced in and pecan trees were planted, but I don't know who planted the pecan trees. When I surveyed this property four years ago, some of the timber had been cut and the fence was down in places. I ran out to the half-section line, and south the width of the lot, and then back to the Bay. I made that survey for the Druhan heirs.

I have never heard of anyone claiming title to this property or claiming to own it other than Mr. James Druhan and his successors in title. I do not know and have never heard of Charles G. Clark. I made a very careful search in an effort to locate him. I inquired of the neighbors, the Ladniers, the Drummonds, and others, and no one had ever heard of him at all.

The property north of this particular piece of property changed hands in recent years and is now owned by P.J. Doyle, and the land on the east belongs to the Smileys at present, and south are the Hurlbutts. The Smiley land is fenced and the boundary line between the two parcels has been well established with stakes, which my father must have put there and when I surveyed the property they were still there. The reason for the stakes is that the boundary between these two parcels is a half-section line to which all the bay-front lots extend.

On cross-examination by Mr. Howard, the witness testified as follows:

The reason I made an effort to locate Charles G. Clark was because the Tax Assessor was making some inquiries about this property.

I used to go to the Harlbutts quite often years ago and, in order to get there, had to pass this property. I would say that the pecan trees that are there now are about twenty-three years old.

I didn't find the property in very good condition the last time I was there and the south fence was dilapidated.

I have a pretty good knowledge of the property in Baldwin County and the owners thereof. I have what is known as a photographic memory and I keep a set of books that start at the north end of the county and extend to the south end.

In 1937 I read a deed executed by Robert Pierce to Grover Clark, who subsequently executed a deed to Charles G. Clark, but I never saw those men and never heard of them.

I don't know that the Druhans bought this property--  
I only know that they claimed to have. I don't know how they  
got possession of it. I do know that a Mr. Pierce lived there  
a good many years ago but how the title got out of him I don't  
know.

Outside of having me survey the property four years  
ago, I don't know of any other act of possession asserted by  
the Druhans in the last twenty years.

On re-direct examination by Mr. Vickers, the witness testified as follows:

It was about seven or eight years ago that the Tax Assessor asked me to look up the deeds from Pierce to Clark and from Grover Clark to Charles G. Clark, and that was the first I knew of these deeds. His records were in a tangle and he was trying to get them straight.

No. 942 VS.

ORDER PUBLISHING TESTIMONY

This cause coming on to be heard, upon motion of Complainant, it is ordered that the Register publish testimony.

Dated,

ORDER OF SUBMISSION

This cause coming on to be heard, is submitted for decree on the pleadings and on the proof as noted.

Dated,

NOTE OF EVIDENCE

At the hearing of this cause the following note of evidence was taken to wit:

For Complainant

Bill of Complaint, Decree pro Confesso vs. all respondents, except Margaret B. Howard, answer of Margaret B. Howard, and testimony of James R. Druhan, Joseph M. Druhan, Captain Joseph Pose and Harry H. Parker

*Visher & Leigh*  
Solicitor for Complainant.

For Respondent

Solicitor for Respondent.

FILED,

Register.



THE STATE OF ALABAMA, }  
BALDWIN COUNTY. }

KNOW ALL MEN BY THESE PRESENTS, THAT WHEREAS, on the 9th day of May, A.D. 1942, 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 Owner Unknown #1, (last known owner Chas. G. Clark) for the costs and expenses thereof and thereunder.

AND WHEREAS, thereafter, to-wit, on the 15th day of June, 1942, said lands were duly and regularly sold by the Tax Collector of said county for said taxes, costs and expenses, and at said sale Margaret Howard 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, W. R. Stuart, 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 Margaret Howard, who is the present owner and holder of said certificate of purchase, all the right, title and interest of the said Owner Unknown (Last known Owner Chas. G. Clark), 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: Begin at a point on road used as a P-R 8.84 chs. Southerly from the N. boundary line of land of Caleb Dana (dec'd) and 424 ft. from Bay front fence of Mrs. Margaret Krebs, thence running E. to land of James T. Nelson (dec'd), thence running 146 ft. S. to land of Aug. G. Krook, thence W. to road used as P-R, thence along said road 146 ft. to place of beg., and contg. 3 1/2 acres, more or less; land hereby conveyed is bounded on N. by land of Mrs. Sarah Post, on S. by land of August G. Krook, E. by land Jas. T. Nelson (dec'd), on W. by road used as P-R. Said land is part of lot next N. of Mary Ann Hughes lot in sub div. No. 4 of frac'l Sec. 6, T 7 S, R 2 E, and is part of same land deeded by John H. Mahler and Francis Hopper to Peter Krebs and Margaret Krebs, Sec. 6, T7S, R2E, lying and being situate in said County and State, to have and to hold the same, the said rights, titles and interests unto herself, the said Miss Margaret Howard, and her heirs and assigns forever, but no right, title or interest of any reversioner or remainderman in said land is conveyed hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, this, the 16th day of June, A. D. 1945.

W. R. Stuart,  
Judge of Probate.

THE STATE OF ALABAMA, }  
BALDWIN COUNTY. }

I, Louise S. Wilson, a Notary Public in and for said County, in said State, hereby certify that W. R. Stuart, 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.

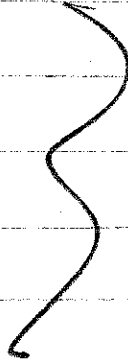
Given under my hand this, the 16th day of June, A. D. 1945.

Louise S. Wilson,  
Notary Public,  
Baldwin County, Alabama.

12

March 5

Mar 19



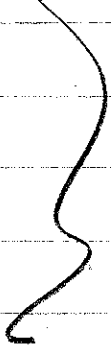
1<sup>st</sup>

Notice

May 14

May 21

May 28



2<sup>nd</sup>

Notice

JAMES R. DRUHAN,  
Complainant,

VS.

THE LANDS DESCRIBED IN THE BILL,  
AND AGAINST CHARLES G. CLARK, ET  
ALS,  
Respondents.

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No. 942 IN EQUITY

IN THE CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.

It is hereby stipulated and agreed by and between the undersigned Solicitors of Record for the parties to the above entitled cause, that the respondent Margaret Howard may offer in evidence, subject to legal exception, the deed of W. R. Stuart, Judge of Probate of Baldwin County, Alabama, dated June 16th, 1945, conveying to her the lands described therein, and identified as Respondent's Exhibit No. 1, without making proof of the execution thereof.

WITNESS OUR HANDS this 18th day of September, 1945.

*Vicker & Hugh*  
\_\_\_\_\_  
SOLICITORS OF RECORD FOR COMPLAINANT

*M. Howard*  
\_\_\_\_\_  
OF COUNSEL FOR RESPONDENT MARGARET  
HOWARD.

ALEX T. HOWARD  
LAWYER  
415 VAN ANTWERP BUILDING  
MOBILE, ALABAMA

January 3, 1946.

Hon. Francis W. Hare,  
Circuit Judge,  
Monroeville, Alabama.

Dear Judge:-

James R. Druhan v. Lands Described in the  
Bill and Charles G. Clark et al.

I have read the reply brief filed by the solicitors for the complainant in the above entitled case, and it seems to me that the fatal defect in the argument made is that it is not shown by the testimony that the complainant showed any right, title or interest whatever in the land, and that in support of his right to redeem, his case is wholly without any showing of color of title.

"Be this as it may, it is believed that the decided weight of authority is to the effect that some writing is necessary in order to give color of title. This has been held or said in a considerable number of decisions, some of which embody this idea in defining color of title." Adverse Possession 2 Corpus Juris, 170.

"The receipt upon which complainant relies as color of title does not purport to convey the lands described in it. It possesses no semblance of title, not containing any words of transfer of the lands. As said by the Supreme Court of the United States in Deffeback v. Hawke, 115 U.S. 407, 6 Sup. Ct. 95, 29 L. Ed. 423: "There can be no color of title in an occupant who does not hold under any instrument, proceeding, or law purporting to transfer to him the title or to give to him the right of possession." Matthews v. Tenn. Coal Iron & R.R. Co., 157 Ala. 23, 47th So. 78.

Counsel referred to the late case of Tensaw Land & Timber Co. v. Rivers, 15 So. (2d) 411, but the entire want of evidence in complainant's case renders this citation inapplicable. Our Supreme Court in this case says -

"There is no question but that the predecessors in interest of this appellant were ~~but~~ fee simple owners of the land. .... We think under the evidence in this case appellant and his predecessors certainly at one time had actual possession under their title and continued in such possession as to require an action against them to recover it".

Respectfully submitted

*Alex Howard*  
Solicitor for Respondent

Copy to Messrs. Vickers, Leigh & Thornton

Margaret B. Howard.

IN THE CIRCUIT COURT FOR THE  
TWENTY-FIRST JUDICIAL CIRCUIT  
OF ALABAMA, BALDWIN COUNTY

JAMES R. DRUHAN,

Complainant,

vs.

LANDS DESCRIBED IN THE  
BILL, Etc.

MEMORANDUM FOR COMPLAINANT

The statement of this case found in the Memorandum for respondent Margaret B. Howard is substantially correct and therefore a further statement will not be made in this memorandum.

Solicitors for respondent state the issues on pages 2 and 3 of their memorandum as, "\* \* \* that this bill is not established by the proof and there was not offered by the complainant sufficient evidence to entitle him to the rights of an owner." Since respondent Margaret B. Howard claims by reason of a tax deed the immediate question between complainant and her is whether complainant is authorized to redeem from the tax sale under which she is claiming. Solicitors for respondent do not seem to argue that complainant cannot redeem from respondent Margaret B. Howard, and under the applicable decisions of the Supreme Court of Alabama we do not believe such could be argued. See Tensaw Land and Timber Company vs. Rivers, 244 Ala. 657, 15 So.(2nd) 411, (1943).

Therefore we take it that between these two parties complainant certainly is entitled to relief insofar as complainant seeks to redeem from the tax sale to respondent Margaret B. Howard.

The question presented for decision by the memorandum seems to be aimed at the proposition that complainant has not established a right to the lands involved by adverse possession.

The evidence in this case shows that complainant's father went into possession of this property not later than 1915. See testimony of James R. Druhan, page 3, " \* \* \* two or three years after \* \* \*" 1910. Testimony of Joseph M. Druhan, page 9, " \* \* \* it was in about 1914 or 1915." Testimony of Captain Joseph Pose, page 10, "Mr. Druhan acquired the property prior to 1916." Testimony of Mr. Harry H. Parker, page 13, " \* \* \* since about 1914."

The nature of this possession taken by complainant's father was described by the witnesses as follows. Mr. James R. Druhan, page 2, "The same (land involved in this action) was then fenced in, the old house was torn down, the land cleared and pecan trees planted thereon. For several years we took proper care of the pecan trees, and while my father was living he kept the property clear and planted in crops and kept the fences in good repair." Joseph M. Druhan, page 9, "He planted pecan trees and vegetable garden on it and put a fence around it." Captain Joseph Pose, page 10, "It is generally referred to as the Druhan property. Mr. Druhan fenced the property and planted pecan trees there." Mr. Harry H. Parker, page 14, "The property was fenced in and pecan trees were planted but I do not know who planted the pecan trees."

From this uncontradicted line of testimony it is apparent that complainant's father went into actual possession of this property and that he exercised acts of ownership over the property. We take it that the only question which can now arise is whether these acts of ownership must continue to the date of the filing of the Bill of Complaint in order to establish a claim by adverse possession.

Before setting out what we conceive to be the applicable law in such a situation three preliminary observations are necessary. In the first place, the provisions of Title 7, Code of Alabama, 1940, Section 828, for one claiming title by adverse possession have been satisfied. This statute makes certain requirements for one claiming by adverse possession, " \* \* \* unless he derives

title by descent cast or devise from a predecessor in title who was in possession of the land." Complainant fits squarely under these provisions of the statute so that statute has clearly been satisfied. Jordan vs. Smith, 185 Ala. 591, 595, 64 So. 317 (1914), Branyon vs. Kirk, 238 Ala. 321, 325, 191 So. 345 (1939). In the second place, it is to be observed that the lands involved in this case are not occupied, cultivated or improved. The testimony clearly shows the nature of the land. The land is vacant, unimproved, uncultivated and is used for garbage disposal. See testimony of James R. Druhan, pages 4 and 6, testimony of Joseph M. Druhan, page 9, testimony of Captain Joseph Pose, pages 10 and 12, testimony of Mr. Harry H. Parker, page 15. Note what Captain Pose said on page 12, "In its present condition it would be physically impossible to take possession of this property until it is cleared away. It is overgrown with underbrush and has been in that condition for a good many years \* \* \* ." Therefore, the type possession held by complainant and his ancestor is to be determined by the nature of the land.

Thus it is said in 1 Am. Jur., pages 866, 867, Adverse Possession, Section 131, "What is adverse possession is one thing in a populous country, another thing in a sparsely settled one and still a different thing in a town or village." Also in 2 C.J.S., page 550, Adverse Possession, Section 38, "The acts of dominion which are necessary and sufficient to indicate adverse possession of a vacant lot necessarily vary from those considered essential in the case of an improved lot. \* \* \* \* If one asserting ownership of a vacant lot goes on it at reasonable intervals, marks its limits or corners with visible monuments, clears it of brush, grass and weeds to the limits so indicated, and points it out as his property to his neighbors and friends, it constitutes adverse possession within the meaning of the law."

In this State it was stated by Chief Justice Brickell in Bell vs. Denson, 56 Ala. 444, 449, (1876), "The possession must be by act suitable to the character of the land." This doctrine has been

the presumption of continued possession carries through to complainant, and complainant's possession being over thirty continuous and unbroken years, the allegations of the complaint are conclusively established.

#### CONCLUSION

Therefore, since the lands involved in this case are vacant and unimproved, and since the possession of such property depends upon the nature of the land, and since complainant's father went into the actual possession of these lands in accordance with the nature of the land itself and since it is not shown that this possession has been disturbed, the presumption that the possession of complainant's father has continued for thirty years is conclusive and establishes complainant's rights to the decree establishing his title in this land. Even if complainant should fail to establish his actual title to the property here involved, nevertheless complainant has shown an uninterrupted possession for over thirty years which clearly establishes a color of title authorizing complainant to redeem said lands from the tax sale to respondent to Margaret B. Howard.

Therefore, the decree in this case should not only establish the title of complainant but should authorize complainant to redeem at tax sale upon the payment of the amount due therefor, which complainant stands ready, willing and able to do.

Respectfully submitted,

*Vickers Leigh & Thornton*  
Attorneys for Complainant

#### CERTIFICATE

I hereby certify that a copy of the foregoing Memorandum was served on Solicitors for Respondent by mailing a copy thereof by U. S. Mail, postage prepaid, on this the 28 day of Dec, 1945.

*J. Edward Thornton*  
One of the Solicitors for Complainant.



THE STATE OF ALABAMA, }  
BALDWIN COUNTY

CIRCUIT COURT, IN EQUITY

No. 941 March, Term, 19 43

James R. Aruban Complainant

<sup>Vs.</sup>  
Sands described in Bill of Complaint, Charles G. Clark if he be living or if he be dead his unknown heirs, devisees or next of kin it 'al Defendant s

Motion is hereby made for a Decree Pro Confesso, against Charles G. Clark if he be living or if he be dead against his unknown heirs, devisees or next of kin, and against any and all persons former or copartners claiming any title or interest in, lien or incumbrance on said land or any part thereof. Defendant s  
in the annexed stated cause, on the ground that more than thirty days have elapsed since the perfection

of publication was made under the order of this Court; and it having been shown by due proof to the Court that said Defendant is a non-resident of the State of Alabama, and has failed to answer, plead or demur to the Bill in this cause, to the date hereof.

This 4<sup>th</sup> day of August 19 43

746 Code

Vickers & Leigh Solicitor s  
Marion R. Vickers of counsel

*RS Duck*

BAY MINETTE, ALA., MAY 18 1943 194  

IN ACCOUNT WITH  
**G. W. ROBERTSON**  
JUDGE OF PROBATE, BALDWIN COUNTY

Please Return Bill With Remittance

Recording	from	to	Privilege Tax	Rec. Fee	Total
	<i>J. R. ...</i>				<i>30</i>
<p><b>PAID</b> MAY 18 1943 <i>MOR</i></p>					

# The BALDWIN TIMES

ALABAMA'S BEST COUNTY'S- BEST NEWSPAPER

BAY MINETTE, ALABAMA

## AFFIDAVIT OF PUBLICATION

STATE OF ALABAMA,  
BALDWIN COUNTY.

Evelyn I. Faulkner being duly sworn, deposes and says that he is the PUBLISHER of THE BALDWIN TIMES, a Weekly Newspaper published at Bay Minette, Baldwin County, Alabama; that the notice hereto attached of

James R. Druhan

vs

Charles G. Clark, et al

### COST STATEMENT

556 WORDS @ 4 1/2cents ..... \$ 25.02

I hereby certify this is correct, due and unpaid (paid).

Evelyn I. Faulkner  
Publisher.

Was published in said newspaper for 4 consecutive weeks in the following issues:

Date of 1st publication May 20, 1943 Vol. 54 No. 16

Date of 2nd publication May 27, 1943 Vol. 54 No. 17

Date of 3rd publication June 3, 1943 Vol. 54 No. 18

Date of 4th publication June 10, 1943 Vol. 54 No. 19

Subscribed and sworn before the undersigned this 11 day of June 1943.

Guadalupe Pri  
Notary Public, Baldwin County.

Evelyn I. Faulkner  
Publisher.

JAMES R. DRUHAN,  
Complainant.

vs.  
The lands described herein, and against CHARLES G. CLARK, if he be living or if he be dead, against the unknown heirs, devisees, next-of-kin, and against MARGARET B. HOWARD, against any and all persons, firms, or corporations claiming any title or interest in, lien or encumbrance on said land or any part thereof.

IN THE CIRCUIT COURT  
OF BALDWIN COUNTY,  
ALABAMA.

IN EQUITY NO 942

Notice is hereby given that James R. Druhan, on the 13 day of May, 1943, filed a bill of complaint in the Circuit Court of Baldwin County, Alabama, in equity, claiming to be in actual, peaceable possession and to own the following described property situated in the County of Baldwin State of Alabama:

That part of lot number 3 of the Calab. Dana Tract of land on Section 6, Township 7 South, Range 2 East, according to their deed of partition recorded in Deed Book F, page 55-57 on May 10th, 1850, described as follows: Beginning on the East side of the road formerly known as the Old Valley Creek or Back Road running from Point Clear southwardly along the Bay shore, which road is now the paved highway, where said road crosses the north line of said subdivision 3 and run due East on said north line 1687.5 feet to the East line of said lot 3; thence South along the East line 146 feet; thence due West 1870 feet to the East side of the above mentioned highway; thence run in a northerly direction along the East side of said highway 147 feet to the place of beginning.

Complainant alleges in his bill of complaint that the title to said lands stands on the records of the Probate Court of Baldwin County, Alabama, in the name of Charles G. Clark, and that Margaret B. Howard claims some interest therein by reason of her purchase at a tax sale on June 15th, 1942.

That complainant claims title to the above described land by a deed from J. Druhan, et al, recorded in the Probate Court of Baldwin County, Alabama.

Complainant further alleges in his bill of complaint that he and his predecessors in title, viz., John J. Druhan and the other grantors in said deed, who were the brothers and sisters of your complainant, and to whom the above described land was devised by their father, viz., James Druhan, and James Druhan, during his lifetime, have since the year 1914, been in the actual, peaceable possession of the above described lands, claiming to own the same, and that during the said time he and his predecessors in title have also paid any taxes thereon or been in possession thereof, with the following exception, viz., Margaret B. Howard, on the 15th day of June, 1942, purchased at a tax sale had by the State of Alabama, under an assessment to "Owner Unknown".

And complainant further alleges in his bill of complaint that the same is filed for the purpose of establishing his title to and interest in said land, and clearing up all doubts and disputes concerning the same.

Witness my hand this the 15th day of April, 1943.

R. S. DUCK,  
Register in Equity, Circuit Court of Baldwin County, Alabama.

VICKERS & LEIH  
Solicitors for Complainant.

THE STATE OF ALABAMA, }  
BALDWIN COUNTY

CIRCUIT COURT, IN EQUITY

No. 942 March, Term, 1943

James R. Hruskan Complainant

Sands described in Bill of Complaint, Charles G. Clark et al Vs. Defendant 5

In this cause it appears to the Register R. S. Duck that the order of publication heretofore made in this cause, was published for four consecutive weeks, commencing on the 20 day of May, 1943, in the Baldwin a newspaper published in Baldwin, Alabama, that a copy of said order was posted at the Court House door in Baldwin County, on the 15 day of May 1943 and

And it now further appearing to the Register R. S. Duck that the said Charles G. Clark, if he be living or if he be dead, his unknown heirs devisees or next of kin and any other persons firms or corporations claiming any title to interest in, lien or encumbrance thereon said land or any part thereof

having, to the date hereof, failed to demur, plead to, or answer the Bill of Complaint in this cause, it is now, therefore, on motion of Complainant R. S. Duck,

that the Bill of Complaint in this cause be, and it hereby is in all things taken as confessed against the said Charles G. Clark if he be living or if he be dead, his unknown heirs devisees or next of kin and any other persons firms or corporations, claiming any title to or interest in said land or any part thereof

This 6 day of May 1943

R. S. Duck Register.

JAMES R. DRUHAN,  
Plaintiff,

VS.

THE LANDS DESCRIBED IN  
THE BILL AND AGAINST  
CHARLES G. CLARK ET ALS.,  
Respondents.)

NO 942

in equity

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA.

NOTE OF EVIDENCE.

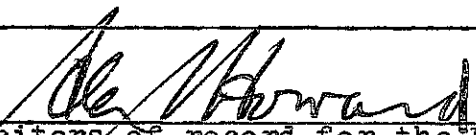
At the hearing of this cause the following note of evidence was taken, towit:

For the Respondent: The Respondent, Margaret B. Howard, notes and relies upon the following:

1st. Answer of Margaret B. Howard.

2nd. Agreement of solicitors of record that the Respondent's Exhibit No. 1, the deed of W. R. Stewart, Judge of Probate, to the Respondent, Margaret B. Howard, may be offered in evidence without proof of its execution.

3d. The said deed of said W. R. Stewart, Judge of Probate of Baldwin County, Alabama, to Margaret B. Howard, Respondent, and identified as Exhibit No. 1 of the Respondent, Margaret B. Howard.

  
Solicitors of record for the Respondent,  
Margaret B. Howard.

James R. Kunkin

vs

Central Life

Insured

State of Indiana

Filed Oct 15 1945

Spencer  
Kunkin

MAILED 11 OCT 15 1945

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NOV 1 1945

RECEIVED BY THE CLERK OF THE COURT OF INDIANA

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JAMES R. DRUHAN,	*		
	*		
Complainant,	*	NO. 942	IN EQUITY
	*		
VS.	*	IN THE CIRCUIT COURT OF BALDWIN	
	*		
THE LANDS DESCRIBED IN BILL,	*		COUNTY, ALABAMA.
AND AGAINST CHARLES G. CLARK,	*		
ET ALS,	*		
	*		
Respondents.	*		

New comes Margaret B. Howard, one of the respondents in the above entitled cause and answering the bill of complaint in accordance with the paragraphs thereof, says:

1. She admits the residence of complainant and that he is over the age of twenty one years.

2. She denies that the complainant is in the actual, peaceable possession of the lands described in the bill.

3. She admits that no other suit is pending to test the title so claimed.

4. She denies that complainant is the owner in fee or otherwise of the said lands, but admits that the same were once owned by Robert J. and Mamie G. Pierce. She is not informed as to whether the Pierces executed a mortgage to complainant's father, James Druhan and demands strict proof thereof, nor is she informed as to the facts alleged about the will of James Druhan nor as to the deed mentioned and demands strict proof thereof if the same be deemed material. She does not know whether the Pierces defaulted in said mortgage, but she denies there was such a mortgage and denies the facts associated with the alleged foreclosure or satisfaction thereof by the surrender of possession of said premises and demands strict proof thereof; and she further denies that complainant's father ever had possession of said lands. She denies the execution of such mortgage and the losing of same and demands strict proof thereof.

5. She admits that the Pierces executed a deed to Grover C. Clark and that he conveyed said lands to Charles G. Clark, as alleged in the bill, also that said lands were sold at tax sale to this respondent, under an assessment to unknown owner, and by virtue thereof this respondent now claims to be the owner of said property.

6. She is not informed as to how long said property

remained unassessed for taxation, but admits that complainant has never assessed the same or paid taxes thereon. Respondent denies that complainant or his father or any predecessor in title of the complainant ever had possession or any right to possession of said lands as alleged.

7. Respondent is not advised as to the facts alleged in this paragraph of the bill and therefore denies the same and demands strict proof thereof if deemed material.

8. Respondent denies the claim of possession set up in this paragraph of the bill and also denies that no other person from 1914 ever has had possession of said lands and that no one has or does claim the same and demands proof of these allegations. She does, however claim, that she acquired the title thereto at said tax sale.

And now having fully answered said bill she prays that the same may be dismissed at the hearing and that she may have her costs incurred herein.



---

SOLICITOR FOR RESPONDENT MARGARET  
B. HOWARD.



LEGAL NOTICE

JAMES R. DRUHAN,

Complainant.

vs.

The lands described herein, and against CHARLES G. CLARK, if he be living, or if he be dead, against the unknown heirs, devisees or next-of-kin, and against MARGARET B. HOWARD, and against any and all persons, firms or corporations claiming any title to, interest in, lien or incumbrance on said land or any part thereof.

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
ALABAMA.

IN EQUITY NO. 942

Notice is hereby given that James R. Druhan, on the 18<sup>th</sup> day of May, 1943, filed a bill of complaint in the Circuit Court of Baldwin County, Alabama, in equity, claiming to be in actual, peaceable possession and to own the following described property situated in the County of Baldwin, State of Alabama:

That part of lot number 3 of the Calab Dana Tract of land in Section 6, Township 7 South, Range 2 East, according to their deed of partition recorded in Deed Book P, pages 55-57 on May 10th 1850, described as follows: Beginning on the East side of the road formerly known as the Old Bailey Creek or Back Road running from Point Clear southwardly along the Bay shore, which road is now the paved highway, where said road crosses the north line of said subdivision 3 and run due East on said north line 1687.5 feet to the East line of said lot 3; thence South along the East line 146 feet, thence due West 1670 feet to the East side of the above mentioned highway; thence run in a northerly direction along the East side of said highway 147 feet to the place of beginning.

Complainant alleges in his bill of complaint that the title to said lands stands on the records of the Probate Court of Baldwin County, Alabama, in the name of Charles G. Clark, and that Margaret B. Howard claims some interest therein by reason of her purchase at a tax sale on June 15th, 1942;

That complainant claims title to the above described land by a deed from John J. Druhan, et al, recorded in the Probate Court of Baldwin County, Alabama.

Complainant further alleges, in his bill of complaint, that he and his predecessors in title, viz., John J. Druhan and the other grantors in said deed, who were the brothers and sisters of your complainant, and to whom the above described land was devised by their father, viz., [Name], and James Druhan, during his lifetime, have, since the year 1914, been in the actual, peaceable possession of the above described lands, claiming to own the same, and that during the said time no one else has paid any taxes thereon by being in possession thereof, with the following exception, viz., Margaret E. Howard, on the 15th day of June, 1942, purchased the same as selected by the State of Alabama, under an assessment of "Owner Unknown".

And complainant further alleges in his bill of complaint that the same is filed for the purpose of establishing his title to and interest in said land, and clearing up all doubts and disputes concerning the same.

Witness my hand this the 18<sup>th</sup> day of April, 1943.

*R. Druhan*

Register in Equity, Circuit Court of Baldwin County, Ala.

*Sickers & Leigh*  
Solicitors for Complainant.

*Handwritten notes:*  
1/13  
Druhan  
Howard  
1942  
1914

*Vertical stamp:*  
THE COMMISSIONER OF THE STATE OF ALABAMA  
BALDWIN COUNTY

JAMES R. DRUHAN, :  
Complainant, : IN THE CIRCUIT COURT  
vs. : OF  
The lands described herein, and : BALDWIN COUNTY,  
against CHARLES G. CLARK, if he : ALABAMA.  
be living; or, if he be dead, :  
against his unknown heirs, dev- :  
isees or next-of-kin; and against :  
Margaret B. Howard; and against :  
any and all persons, firms and : In Equity No. \_\_\_\_\_  
corporations claiming any title :  
to, interest in, lien or incum- :  
brance on the hereinafter des- :  
cribed property, :  
Respondents. :

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA, SITTING IN EQUITY:

Now comes James R. Druhan and brings this, his bill of complaint, against the land hereinafter described and against Charles G. Clark, if he be living, and against his heirs, devisees or next-of-kin if he be dead, and against Margaret B. Howard, and against any and all persons, firms and corporations claiming any title to, interest in, lien or incumbrance on the hereinafter described property or any part thereof, and respectfully shows unto Your Honor as follows:

ONE

That he is a resident of the County of Mobile, State of Alabama, and is over the age of twenty-one years.

TWO

Complainant alleges that he is in the actual, peaceable possession of the following described lands situated in Baldwin County, Alabama, to-wit:

That part of lot number 3 of the Caleb Dana Tract of land in Section 6, Township 7 South, Range 2 East, according to their deed of partition recorded in Deed Book F, pages 55-57 on May 10th, 1850, described as follows: Beginning on the East side of the road formerly known as the Old Bailey Creek or Back Road running from Point Clear southwardly along the Bay Shore, which road is now the paved highway, where said road crosses the north line of said subdivision 3 and run due East on said North line 1687.5 feet to the East line of said lot 3; thence South along the East line 146 feet, thence due West 1670 feet to the East side of the above mentioned highway; thence run in a northerly direction along the East side of said highway 147 feet to the place of beginning.

THREE

Complainant alleges that no suit is pending to test his title to, interest in or right to possession of the said lands.

FOUR

Complainant further shows that he is the owner in fee of the above described lands; that the same were at one time owned by Robert J. Pierce and Mamie G. Pierce; that these parties executed a mortgage to James Druhan, the father of your complainant; that James Druhan died testate, leaving a last will and testament by the terms of which he devised this property to all of his children, including your complainant; that your complainant purchased the above described property from his brothers and sisters, and obtained a deed from them, which is recorded in the Probate Court of Baldwin County, Alabama; that Robert Pierce and Mamie Pierce did not pay the mortgage to the father of your complainant, but, in the year 1914, they surrendered possession of the above described property to the father of your complainant in full satisfaction of the mortgage; that at the time the said Pierces surrendered possession there was a house on the above described property in which they were living, and that they thereupon moved out of the same, and your complainant's father, and his successors in title, have been in possession of the above described property ever since the above mentioned date; that the mortgage to your complainant's father was not recorded, and has been lost and is unable to be found.

FIVE

Your complainant alleges that the record title to the above described property stands in the name of Charles G. Clark and Margaret Howard; that the Pierces named above, in 1907, executed a deed to Grover C. Clark, who, in 1910, executed a deed to Charles G. Clark, conveying the above described property, both of which deeds were subsequent to the mortgage to your complainant's father; that on the 15th day of June, 1942,

brance thereon, except the tax claim of Margaret B. Howard;  
and your complainant prays for such other, further and general  
relief as in equity and good conscience he may be entitled to  
receive.

Vicker & Seay  
Solicitors for Complainant.

Marion R. Vicker  
Of Counsel.

STATE OF ALABAMA,  
COUNTY OF MOBILE.

Before me, the undersigned Notary Public, in and for  
said State and County, personally appeared James R. Druhan,  
who, being by me first duly sworn, deposes and says:

That he has read the foregoing bill of complaint and  
that the allegations of fact therein contained are true and  
correct.

James R. Druhan

Subscribed and sworn to before me,  
this the 30th day of April, 1943.

Hilda Stevens  
Notary Public, Mobile County, Alabama.

JAMES R. DRUHAN,  
Complainant,  
VS.  
LANDS DESCRIBED IN THE BILL  
AND CHARLES G. CLARK ET AL.  
Respondents.

NO. 942                    IN EQUITY  
IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA.

MEMORANDUM FOR THE RESPONDENT, MARGARET B. HOWARD.

This is a bill by which the Complainant seeks to quiet the title to a small tract of land in Baldwin County, Alabama, lying to the east of the highway which runs north and south and separates the homes on Mobile Bay from the property, mostly unoccupied, on the east side of the road. The bill itself appears to be sufficient to accomplish this purpose. It sets out that the Complainant is in the actual, peaceable possession of the lands described in the bill. It alleges that he is the owner in fee of the lands, that they were owned by Robert Pierce and Mamie G. Pierce, who executed a mortgage to the Complainant's father, who left the property, by will, to his children, and that Complainant bought the shares of the other children and obtained a deed from them. It further sets up that the claim of the parties was based on a mortgage executed by the Pierces to Complainant's father, and it is alleged that the mortgage was never paid and that the Pierces surrendered possession of the lands described to Complainant's father, and it is claimed that after the Pierces moved out of the home in which they were living that Complainant's father

planted some pecan trees on the property and that he at one time cultivated the soil and that there had been a fence around the property. It is further alleged that the above mentioned mortgage was never recorded, had been lost and Complainant could not find it.

The Complainant then proceeds to show that the record title to the above described property is in the name of Charles G. Clark and Margaret B. Howard, that the Pierces above shown to have surrendered possession of the property to Complainant's father, executed a deed to Grover C. Clark, who in 1910 executed a deed to Charles G. Clark, conveying the property to him; that in 1942 the property was sold by the State to the Respondent, Margaret B. Howard, under an assessment to owner unknown. It is further alleged that prior to 1941 the property had not been assessed for taxation for more than twenty years, and that the Complainant and his predecessors had been in possession of the property since 1914.

The Respondent, Margaret B. Howard, by her answer, denied that the Complainant is in possession of the land, denied Complainant's ownership of it, admitted that the Pierces once owned it, denied the existence of the mortgage under which Complainant claimed title to the property and demanded strict proof thereof.

She offered in evidence her tax deed to the property. There is no controversy as to the validity of the tax deed, but the Complainant claims the right to redeem therefrom as the owner of the property.

We have said above that the complaint sets out a cause of action, but the purpose of our memorandum is to submit that this bill is not established by the proof and there was not offered by

the Complainant sufficient evidence to entitle him to the rights of an owner. It is also submitted that there is not only no legal evidence of ownership of the land but such facts as were established were merely evidence of some sort of scrambling possession or claim, certainly not sufficient to establish any adverse possession. In the first place the record shows absolutely no color of title in the Complainant, and such acts of asserted ownership as were shown were abandoned many years ago, that is to say, there was no evidence to show that the scrambling acts of adverse possession, namely the planting of pecan trees and the planting of some sort of garden upon the land were anything more than casual and certainly did not amount to such continued possession as the law requires. On the contrary, we submit it was admitted in the evidence by the Complainant that, like a great portion of the property east of said highway, the same fell into disuse, that the fence was not kept in repair and that the whole property was submerged in undergrowth.

It is also respectfully submitted that one cannot claim ownership of property under a conveyance, whether it be a mortgage or a deed, without producing the same in court and establishing that it was executed and, if it be a homestead such as this is shown to have been, to have been executed by the wife separate and apart from her husband. There is a procedure, as your Honor knows, set out in the Code for establishing lost deeds, but no such procedure was resorted to in this case, in fact, the Complainant, who appears to have known more about the matters involved than any



one else, admitted on cross examination that the alleged mortgage was never recorded, that he had never seen it, did not know how it was executed, that he did not know the amount of the mortgage debt, that he had searched for the instrument among his father's papers, but could not find it. If this alleged mortgage had been produced and offered in evidence, certainly Complainant would have been under the burden of showing its execution.

Another obstacle to Complainant's establishing any valid claim to this property is, he has offered no proof of description of the land conveyed by this mortgage. Another omission in Complainant's proof is that no effort is made to establish on what date the Pierces are supposed to have executed the mortgage to Complainant's father, and it is submitted that they could not have done so after conveying their title to Clark.

While we earnestly submit that no title whatsoever could have been established by such a vague and uncertain claim, the Complainant's case must also fall because certainly under the laws of Alabama, even if there had been such an instrument of title, the Complainant could not build up his title by any such method of foreclosure as was shown by the testimony in this case. In fact, it is submitted that there was no claim whatever of recourse to any of the usual methods to foreclose a mortgage. In fact, we submit that the evidence shows that the Complainant also admitted that he did not hear the conversation on which such a foreclosure was to be authorized, that is to say, he did not hear the conversation which is alleged in the bill asserting that the Pierces con-

fessed they could not repay the Complainant's father his debt and that they were going to move out and surrender possession. The Complainant also admitted that he had no personal knowledge of the surrender of possession by the Pierces to his father. This vague and uncertain situation is distinctly negatived by all the actions of the Pierces, who, according to the allegations of the bill of complaint, had already executed a deed to Grover C. Clark, who thereafter executed a deed to Charles G. Clark, both of which deeds were prior to the alleged surrender of possession by the Pierces to Complainant's father. These instruments are shown to have been on record in Baldwin County and were certainly notice to Complainant's father that they were unmindful of any claim that he had by mortgage or otherwise.

It appears from the testimony in the case, which is further proof, that the Complainant has made a strenuous effort to locate Charles G. Clark, evidently for the purpose of obtaining a record title which would give him some title to this property, but that he had been unable to find this record owner of the property.

It further appears from the Complainant's testimony that he did not think that any of the trees left on the property are bearing pecans. It appears that the only pecans ever gathered was in 1923, more than twenty years before the filing of the suit. The garden was planted about 1923 and since that time the property had never been used in any way at all except for garbage.

It appears from the testimony offered in support of the

bill that there is really no foundation for the claim made by the Complainant to this property. We have specifically mentioned the testimony of the Complainant, Mr. James R. Druhan, because his testimony is not only that of the Complainant himself, but certainly is the strongest of the testimony offered, that of the other witnesses being almost, if not entirely, hearsay. In fact it appears that it just about amounts to this, that the Complainant for some reason wants the property and is willing to redeem it from the tax sale, but when we stop to consider on what he bases his claim, it seems to simply amount to this, that he once thought his father owned it, and some people heard that he claimed it. Some of the people on the Bay front owned the property to the rear of them, to the east of said roadway, and he thinks that it should belong to him. It is to be noted that his father left a will which does not appear to have ever mentioned his ownership of any property to the east of the highway, certainly not that described in the bill of complaint, and that when the Complainant bought out his brothers and sisters, this particular property was not described in the deed under which the Complainant claims. In other words, it seems pretty clear that neither the Complainant nor his family thought they owned this piece of property and never asserted any claim to the same until the State of Alabama sold the property for unpaid taxes to the Respondent, Margaret B. Howard. Then the Complainant felt that it should be his and made an effort to locate Charles G. Clark, so that he could get a record title to the property and put himself in a position to redeem it. Another forceful reason why we say that the Complainant did not

claim to own this property is because he never did assess it for taxation. It certainly could not serve to in anywise establish any claim on behalf of the Complainant that he thought his family owned this property or that he always understood that they owned it. When asked why he did not assess it for taxation he said that the Druhans always wrote to Bay Minette to get their tax bill and paid it and that he simply thought that this piece of property over on the east side of the highway was included in the Druhan property.

As further illustrating the weakness of Complainant's claim, both as to showing any color of title or adverse possession to the property, we quote directly from the evidence of other witnesses as follows:

Witness Joseph Pose.

On direct examination this witness testified:

"Mr. Druhan acquired the property prior to 1916, and I have never heard of anyone else claiming title to it other than his successors in title. I, of course, don't know whether Mr. Druhan had a deed to the property or how he acquired it. It is generally referred to as the "Druhan property". Mr. Druhan fenced the property and planted pecan trees there." Record page 10.

\* \* \* \* "During all of the time that I have been familiar with this property I have <sup>not</sup> known or heard of anyone asserting any claim to it other than the Druhan family until about three years ago. At that time I heard that Mr. Robert Pierce had sold it to some man by the name of Clark." Record, page 11.

On cross examination the witness testified:

"I have never seen anybody exercise any act of possession since that time (1916) except the incident I mentioned before when Mr. Parker surveyed the property some four years ago. I have been over this property many times and the last time was about a year ago. The fences are in awfully bad shape, but the lines are all well defined. It's grown up with underbrush and no one lives there. I have never heard of the Druhans renting it to anyone." \* \* \* \* \*

"In its present condition it would be physically impossible to take possession of this property until it is cleared away. It is overgrown with underbrush and has been in that condition for a good many years - I don't know whether it has been over twenty years or not." \* \* \* \* \*

"I have no personal knowledge of any transfer that Pierce made to the Druhans. I didn't witness any such transfer and never saw any deed, and I don't know the circumstances under which it is claimed that Pierce surrendered possession to Mr. Druhan." Record, page 12.

On re-cross examination witness testified:

"Mr. Druhan planted the vegetable garden prior to 1916, and as far as I know there has not been any vegetable garden planted since. There are some pecan trees left, but the underbrush has grown up so around them that they don't amount to anything."

Record, page 13.

Witness Harry H. Parker.

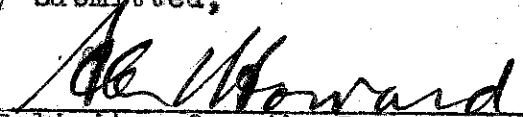
On crosst examination this witness testified:

"I don't know that the Druhans bought this property - I only know that they claimed to have. I don't know how they got possession of it. I do know that a Mr. Pierce lived there a good many years ago but how the title got out of him I don't know."

Outside of having me survey the property four years ago, I don't know of any other act of possession asserted by the Druhans in the last twenty years." Record, page 15.

"The essential elements of adverse possession are well understood. It must be actual and continuous, as well as exclusive, open, and notorious, hostile, and under claim of right. If possessing all other elements, but lacking in continuity only, or any one of the above constituents, the possession will not effect a bar to the legal title." Montgomery vs. Spears, 218 Ala. 160; 117 So. 753.

Respectfully submitted,

  
Solicitor for the Respondent,  
Margaret B. Howard.

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA, }  
BALDWIN COUNTY } No. 942.

CIRCUIT COURT BALDWIN COUNTY

May. TERM, 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Margaret B Howard.

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 Margaret B Howard.

et al., Defendant

by \_\_\_\_\_

James Druhan Plaintiff

Witness my hand this 18th day of May. 194 3

*R. D. Duck*

Clerk.

JAMES R. DRUHAN,  
Complainant,  
VS.  
CERTAIN LANDS AND MARGARET  
B. HOWARD,  
Respondent.

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

It does not appear from a consideration of the evidence in this case that the complainant's father, under whom he claims title, had any deed or other color of title purporting to convey the property, or that he or the complainant had listed the property for taxation. It is contended that the complainant's father had a mortgage on the property given by one Pierce, but this mortgage is not satisfactorily established, no witness having ever seen the mortgage. Complainant shows that his father took possession of the land and held possession for a number of years. He claims title under a will from his father to his mother and under a deed from his father's devisees. The deed is not in evidence, nor is the will of his father. His mother is not shown to be dead, nor is it shown that she ever disposed of the property which he claims was willed to her. I therefore, conclude that complainant has not established a legal title to the property entitling him to redeem from tax sale.

The register will enroll the following decree:

D E C R E E:

This cause coming on to be heard is submitted upon the pleading and evidence as noted by the Register, and upon consideration thereof, I am of the opinion that the complainant is not entitled to the relief prayed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complainant is not entitled to redeem, and that his bill of complaint be and the same hereby is dismissed.

*Complainant is taxed with the costs -*  
This 16th day of January, 1946.

*F. W. Hare*  
\_\_\_\_\_  
JUDGE



THE STATE OF ALABAMA,  
Baldwin County

CIRCUIT COURT

TO *Hilda S. Rutherford & Merchants National Bank Bldg Mobile Ala*

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine

*James R. Aruban, Joseph Pore, Joseph Aruban and Marvin R. Vickers and Harry Parker*

as witnesses in behalf of *Complainant* in a cause pending in our Circuit Court of Baldwin County, of said State, wherein *James R. Aruban*

and *lands described in bill of complaint, Charles G. Clark et al* is Complainant

*are* Defendant, s

on oath to be by you administered, upon *oral examination* to take and certify the deposition *s* of the witness *es* and return the same to our Court, with all convenient speed, under your hand.

Witness *16<sup>th</sup>* day of *August*, 19*43*.

*R. Duck*

REGISTER

Commissioner's Fee \$ *25<sup>00</sup>*

Witness' Fees, \$ \_\_\_\_\_

JAMES R. DRUHAN,	:	
	:	
Complainant.	:	IN THE CIRCUIT COURT OF
	:	
vs.	:	BALDWIN COUNTY,
	:	
The lands described in the bill of:	:	ALABAMA.
complaint, and	:	
	:	
vs.	:	IN EQUITY # _____
	:	
CHARLES G. CLARK, ET AL,	:	
	:	
Respondents.	:	

The following testimony was taken before Hilda S. Rutherford as Commissioner, on the 20th day of October, 1943, at 11:00 A. M., in the office of Vickers and Leigh, Merchants National Bank Building, Mobile, Alabama.

Honorable Alex Howard, Solicitor for the Respondent, Margaret B. Howard, and Marion R. Vickers, Solicitor for the Complainant, were present. Notice of the taking of testimony was waived by the Solicitors for both parties, and it was agreed between the Solicitors for the Complainant and the Respondent Margaret B. Howard that the signing of the testimony by each of the witnesses would be and is hereby waived.

Mr. James R. Druhan, a witness for Complainant, having been first duly sworn, testified on direct examination by Mr. Vickers as follows:

My name is James R. Druhan. I am the Complainant in the bill to quiet title filed in the Circuit Court of Baldwin County, Alabama, against a portion of Lot 3 of the Caleb Dana Tract of land in Section 6, Township 7 South, Range 2 East, and more fully described in the bill of complaint, and against Charles G. Clark et al. I am over the age of twenty-one years and live in Mobile County, Alabama, and have been living in said county and state all of my life.

This mortgage was never recorded, and I have searched all of my father's papers in an effort to find it without success.

I don't remember the exact date the summer home was built but I do remember that it was the same year in which my father acquired the property west of the road, and it was some two or three years after the summer home was built that he took possession of the property east of the road from Pierce.

Some of the pecan trees are still standing, but brush and small trees and vines have grown up all around them. Some portions of the fences are down and other portions are still intact.

When my father died, his will was duly probated in Mobile County, Alabama, and I subsequently acquired the interest of all of the devisees under his will to his property in Baldwin County.

I never knew a Charles G. Clark and the first time I ever heard of him was when his name appeared in the abstract of title at the time I purchased the property about a year or eighteen months ago. I made an effort to locate Mr. Charles G. Clark by inquiring of the local residents of the vicinity in which the property is located. Among the persons contacted in this regard were Mr. Caleb Dana, Captain Joseph Pose and members of my own family. None of these people ever knew a Mr. Charles G. Clark or had ever heard of him.

Charles G. Clark has never been in possession of the property described in the bill of complaint within the last twenty years. No one, other than my father and his successors in title, have been in possession of said property or have manifested any ownership in it in any way since Mr. Pierce left the property.

It was in about 1914 or 1915, I think, that my father took possession of this property. He planted pecan trees and a vegetable garden on it, and put a fence around it.

I have inspected this property in recent years, and portions of the fence are down, but in some places the posts and wire are still intact.

I have never heard of any claim to this property other than by my father and his successors in title. It was always known as the "Druhan property."

On cross-examination by Mr. Howard, the witness testified as follows:

I did not hear the conversation between my father and Mr. Pierce as to the circumstances of the loan, and I don't know of my own knowledge how much the loan was. I never saw any mortgage, and I don't know how the loan was secured. I was quite young at the time, but I remember my father taking a sum of money out on the back lot with which to transact some business. I was not back there and do not know what actually transpired except that my father subsequently acquired the property. If I remember rightly, I was on the back porch when my father came in and told my mother that they had another farm and she could go ahead and plant it or do what she wanted to with it.

After my father's death we accepted whatever tax bill the Tax Collector sent us and assumed that we were paying taxes on all the property. No member of my family, as far as I knew, ever knew that my father ever attempted to assess that particular piece of property. If it is a fact that my father never assessed the same for taxation, I don't know why he failed to do so.

*Joseph M. Druhan*

Captain Joseph Pose, a witness for Complainant, having been first duly sworn, testified on direct examination by Mr. Vickers as follows:

My name is Joseph Pose and I live on the Greenough Boulevard, east of Zundels, in Baldwin County, Alabama. I was born in Baldwin County and have lived there all of my life. I am now sixty-one years of age. I am in the real estate business and have been engaged in this business for about eight or nine years.

I am familiar with the property east of the road and south of Zundels which is claimed by Mr. James R. Druhan. I was born within about a city block of this property, was raised there and lived there after I was married for a number of years. In 1916 I moved to Daphne, which is also in Baldwin County, and lived there eight years. I am presently living about two and one-half miles from the above mentioned property.

When I first remember the property it was owned by a Mrs. Krebs, then by Mr. August Krook, and then by Mr. Robert Pierce, and then by Mr. James Druhan. These are the only owners I ever remember. Mr. Druhan acquired the property prior to 1916, and I have never heard of anyone else claiming title to it other than his successors in title. I, of course, don't know whether Mr. Druhan had a deed to the property or how he acquired it. It is generally referred to as the "Druhan property." Mr. Druhan fenced the property and planted pecan trees there.

I inspected this property last year and the fence had fallen down in spots, but there were still some posts and wire on three sides. This property is bounded on the east by the Smiley, formerly the Nelson, property, which is fenced.

I do not know, and prior to last year, had never heard of either Mr. Charles G. Clark or Mr. Grover Clark. Within the last year, in an effort to locate these parties, I

talked to Mr. Otto Zundel, Mr. Arnold Brodbeck, Mr. Joseph Klumpp, Mr. Harry Parker, the surveyer and abstractor, who knows most of the people who own property in that part of Baldwin County, Mr. Jim Gaston at Fairhope, the Ladniers, and everyone I could think of who had lived there for a number of years, and no one had ever heard of Charles G. Clark. Mr. Otto Zundel and Mr. Arnold Brodbeck are in the general mercantile business there and have a store about one-half a mile from the property described in the bill of complaint. The Zundel and Brodbeck families have lived in Baldwin County for more than seventy-five years. I did not find any clue as to who Charles G. Clark might be.

This property, for the last twenty or twenty-five years, has been in the possession of the Druhans. I remember well, about four years ago, my wife and I were driving past there and I noticed Mr. Parker, the surveyor, and some other people--one of them was a lady from Mobile named Mrs. Nettles, whom I knew. I stopped my car and asked Mr. Parker what he was doing, and he said he was surveying the property. The lady then told me she was thinking about buying it.

I lived right down the road from this property and during Mr. Druhan's lifetime I passed by there several times when he out on the back lot directing the planting of trees and a vegetable garden.

During all of the time that I have been familiar with this property I have known or heard of anyone asserting any claim to it other than the Druhan family until about three years ago. At that time I heard that Mr. Robert Pierce had sold it to some man by the name of Clark.

The land south of this property is owned by the Hurlbutts, and the property to the north of it belongs to Joe Doyle, I think. The boundaries of the Doyle, Hurlbutt and Smiley properties are well known and defined.

On cross-examination by Mr. Howard, the witness testified as follows:

Q. You don't know that Mr. Druhan ever acquired the property except that you heard he had claimed it?

A. Yes.

Q. When did you see him working on it?

A. I can't remember, but it was prior to 1916 because I moved away from there in 1916 and stayed eight years.

I have never seen anybody exercise any act of possession since that time except the incident I mentioned before when Mr. Parker surveyed the property some four years ago. I have been over this property many times and the last time was about a year ago. The fences are in awfully bad shape, but the lines are all well defined. It's grown up with underbrush and no one lives there. I have never heard of the Druhans renting it to anyone.

I dig into the records quite a bit in my business, trying to find out locations of property, if it's for sale, names of owners, etc., and I have never known or heard of a deed conveying this property to Grover Clark. I happened to be searching the records in Bay Minette to a piece of land and ran into a deed on the records there from Grover Clark to Charles G. Clark.

In its present condition it would be physically impossible to take possession of this property until it is cleared away. It is overgrown with underbrush and has been in that condition for a good many years--I don't know whether it has been over twenty years or not.

I have no personal knowledge of any transfer that Pierce made to the Druhans. I didn't witness any such transfer and never saw any deed, and I don't know the circumstances under which it is claimed that Pierce surrendered possession to Mr. Druhan.

JAMES R. DRUHAN,	:	IN THE CIRCUIT COURT
Complainant.	:	OF
vs.	:	BALDWIN COUNTY,
The lands described in the bill of complaint, and	:	ALABAMA.
vs.	:	
CHARLES G. CLARK, ET AL,	:	In Equity # _____
Respondents.	:	

TO THE HONORABLE J. BLOCKER THORNTON, JUDGE OF SAID COURT:

Comes Hilda S. Rutherford, the Commissioner appointed in the above entitled cause to take the testimony of James R. Druhan, Joseph M. Druhan, Captain Joseph Pose and Harry H. Parker, witnesses for the Complainant in the above entitled cause, and respectfully represents and shows unto Your Honor as follows:

That the Commissioner caused to come before her the above named witnesses at 11:00 A. M. on October 20, 1943, at the office of Vickers and Leigh in the Merchants National Bank Building, Mobile, Alabama, more than one days' notice to each of said witnesses and to the Honorable Alex Howard, Solicitor for Respondent Margaret B. Howard, and to Marion R. Vickers, Solicitor for Complainant, having been given;

That the Commissioner knows each of the witnesses named above, and that each of them was duly sworn by her; that they testified as is shown by the enclosed copy of their testimony; that the testimony was, by the Commissioner, reduced to writing, and that it was subscribed by the witnesses in her presence after having been first read over to them.



The Commissioner further certifies that she is not of kin or of counsel to either party to the suit, and that she is not in any manner interested in the result thereof.

Hilda S. Ruthyard  
Commissioner.