

974

The State Of Alabama, Baldwin County

CIRCUIT COURT, IN EQUITY

DOROTHY PHILLIPS

Complainant

VS

RILEY PHILLIPS

Respondent

This cause coming on to be heard was submitted upon Bill of Complaint, Decress Pro Confesso on Answer and Waiver and Testimony as noted by the Register, and upon consideration thereof, the Court is of the opinion that the Complainant is entitled to the relief prayed for in said bill.

It is therefore ordered, adjudged and decreed by the Court that the bonds of matrimony heretofore existing between the Complainant and Defendant be, and the same are hereby, dissolved, and that the said DOROTHY PHILLIPS is forever divorced from the said

RILEY PHILLIPS

for and on account of Cruelty

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Complainant, Dorothy Phillips, be awarded the care, custody and control of the minor child, James Wiley Phillips;

Respondent is ordered to pay to Complainant the sum of \$67.50 per month as alimony, as per agreement on file -

It is further ordered, adjudged and decreed that neither party to this suit shall again marry except to each other until sixty days after the rendition of this decree, and that if appeal is taken within sixty days, neither party shall again marry except to each other during the pendency of said appeal.

It is further ordered that Dorothy Phillips, and Riley Phillips be, and they are hereby permitted to again contract marriage upon the payment of the cost of this suit.

It is further ordered that Riley Phillips the Respondent pay the cost herein to be taxed, for which execution may issue.

This 2nd day of August, 1943.

J. M. Hare
Judge Circuit Court, in Equity.

I, _____, 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 the _____ day of _____, 19____

Register of Circuit Court, in Equity.

The State Of Alabama Baldwin County

CIRCUIT COURT IN EQUITY

RECORDED

No. Page

The State Of Alabama

Baldwin County

In Circuit Court, In Equity

DOROTHY PHILLIPS

vs. Complainant.

RILEY PHILLIPS

Respondent.

DIVORCE DECREE

Faint, mostly illegible text in the lower half of the page, likely containing the body of the divorce decree.

DOROTHY PHILLIPS

COMPLAINANT

VS.

RILEY PHILLIPS

RESPONDENT

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY
CIRCUIT COURT OF BALDWIN COUNTY

This cause is submitted in behalf of Complainant upon the original Bill of Complaint, _____
Answer and waiver of Respondent, Testimony of Dorothy Phillips, and Mrs
Claudia M. Presley, _____ agreement as to alimony and custody of the
minor child. _____

and in behalf of Defendant upon _____

DOROTHY PHILLIPS
Complainant
VS
RILEY PHILLIPS
Respondent

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

And now comes the Respondent, Riley Phillips, in his own proper person, and accepts service of the summons and complaint in this cause.

The Respondent denies each and every allegation contained in the Complainant's bill of complaint, and demands strict proof of the same.

The Respondent waives notice of the time of taking testimony on behalf of the Complainant, the right to cross examine Complainant's witnesses, and agrees that this cause be submitted for final decree forthwith, without further notice.

Riley Phillips

WITNESS:

[Signature]

STATE OF ALABAMA
BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA - - GREETING:

WE COMMAND YOU, that you summon RILEY PHILLIPS to be and appear before the Judge of the Circuit Court of Baldwin County, Alabama, exercising Chancery Jurisdiction within sixty days after the service of the summons, and there to answer, plead or demur without oath to a bill of Complaint, lately exhibited by Dorothy Phillips against the said Riley Phillips, and further to do and perform what the said Judge shall order and direct in that behalf, and this the Respondent 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 27th day of July, 1943.


Register.

DOROTHY PHILLIPS)
COMPLAINANT)
VS)
RILEY PHILLIPS)
RESPONDENT)
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

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

Now comes your Complainant, Dorothy Phillips, and humbly complaining against the Respondent, Riley Phillips, respectfully represents and shows unto your Honor and this Honorable Court as follows:

1.

That your Complainant and the Respondent are both over twenty one years of age, and bona fide residents of Baldwin County, Alabama;

2.

That they were married at Richmond, Indiana, on March 28th, 1936, and lived together as husband and wife, until July 24th, 1943, in Baldwin County, Alabama;

3.

That on, to-wit, July 24th, 1943, and at various other times prior thereto, the Respondent threatened the Complainant, and often threatened to do violence

to her person which would necessarily endanger her life and health; that the conduct of the Respondent was such as to give Complainant every reasonable apprehension to believe, and she did believe, that if she continued to live with him he would carry out his threats and do violence to her person which would necessarily endanger her life and health;

4.

That there was born to said marriage between your Complainant and Respondent one child, James Riley Phillips, now six years old, and who is now and has been all his life with Complainant, who is a fit, suitable and proper person to have the care, custody and control of said minor child;


PRAYER FOR PROCESS.

Wherefore, the premises considered, your Complainant prays that your Honor will, by proper process, make the said Riley Phillips party Respondent to this Bill of Complaint, requiring him to plead, answer or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court.

Complainant further prays that upon a final hearing hereof, your Honor will give and grant unto her an absolute decree of divorce, forever barring the bonds of matrimony existing between her and the Respondent, that she be awarded the care, custody and control of the minor child, James Riley Phillips, and that your Honor will give and grant unto her such other, further, different and general relief as she may be in equity and good conscience entitled to receive, and as in duty bound she will ever pray.

BEEBE & HALL,

BY


Solicitors for Complainant.

The State of Alabama, }
Baldwin County

CIRCUIT COURT

To Bernice F. Reid

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 Dorothy Phillips and Mrs. Claudia M. Presley

as witnesses in behalf of Complainant in a cause pending in our Circuit Court of Baldwin County, of said State, wherein Dorothy Phillips

Complainant

and Riley Phillips

is Defendant,

on oath to be by you administered, upon July 30th, 1943
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 29th day of July 1943

R. Jones
REGISTER

COMMISSIONER'S FEE, \$ _____

WITNESS' FEES, \$ _____

line of said Section 17, which point would, if the Section were a regular government section, be the Southwest Corner of said Section 17, and Northwest Corner of Section 20, Northeast Corner of Section 19 and Southeast Corner of Section 18, which said point was originally established by the Federal Government, which lies within the limits of said Section 39. From said point thus described, run North 491.08 feet, thence due West 2038.5 feet to a stake which marks the beginning corner of this said excepted tract, thence South 38 degrees West 625.68 feet to a stake, thence North 52 degrees West 650 feet to the Easterly margin of Minette Bay, thence Northeastwardly along the margin of the said bay 625 feet, more or less, to a point, which is North 52 degrees 0 minutes West and 658 feet from the point of beginning; thence South 52 degrees 0 minutes East 658 feet to the point of beginning;

of which they were in possession and upon which, pending such possession, and before the commencement of this suit, the Defendants entered and unlawfully withhold, together with Five Thousand Dollars (\$5,000.00) for the detention thereof.

M^s. Corvey, Turner & Rogers
J. B. Blackburn
Attorneys for Plaintiffs.

Plaintiffs demand a trial of this cause by jury.

M^s. Corvey, Turner & Rogers
J. B. Blackburn
Attorneys for Plaintiffs. 10

(5)

MERCHANT NATIONAL BANK
OF MOBILE ET AL

PLAINTIFF

VS

JAMES MORRIS ET AL

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW.

Answers & Demurrers

Now come the Defendant separately and severally and for answer to the Plaintiff's complaint and each and every allegation therein contained say:

1. They disclaim title to all the property described in the bill of Complaint except the following: that parcel of land lying between the South line of the Lefroy Troulitt Grant, known as Section 39, Township 4 South, Range 1 East, and the North line of the Alexis Troulitt Grant, known as Section 38 Township 4 South, Range 1 East, the range line between ranges 1 East and 2 East and the Appalachy River; ^{being Lot A Dec 25-45 1 E} and a certain lot of land commencing at the waters edge on the North boundary line of the Alexis Troulitt Grant and running thence East 12.64 chains, thence South 3.16 chains, thence west to the waters edge, thence with the meanderings of the same to the place of beginning, lying within limits of old Spanish Fort, and containing about 4 acres, and being a part of the Alexis Troulitt Grant, lying in Township 4 South, Ranges 1 and 2 East, Baldwin County, Alabama, and as to said property herein described the Defendants plead the general issue.

Thurbee
Atty for Defendants //

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking As-
sociation, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS

Defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW. NO. ____.

✓ INTERROGATORIES PROPOUNDED TO THE DEFENDANTS, AS
PROVIDED BY TITLE 7, SECTION 477 OF THE 1940 CODE
OF ALABAMA.

1. Are you, or either of you, in possession of all or any part of the property described in the Complaint that has been filed in this cause?

2. If your answer to the foregoing interrogatory is Yes, describe the property that is in your possession.

3. Do you, or either of you, claim title to all or any part of the property described in the Complaint that has been filed in this suit and, if so, how long have you claimed such title?

4. If your answer to the foregoing interrogatory is Yes, describe the property to which you claim title and state whether you claim title in your individual capacity, or with one or more other persons and if you claim title to the said property with one or more other persons, give their name or names and the interest or interests that each of you claim in the property.

5. If you, or either of you, claim title to all or any part of the property described in the Complaint that has been filed in this suit, state whether you acquired title through a deed, deeds or other written instruments and attach a true and correct copy of all deeds or other written instruments through which you claim title to the said property to your answers to these interrogatories.

6. Have you, or either of you, assessed any part of the property described in the Complaint in this suit for taxation? If so, list the tax years when the property was assessed by you and give a correct description of the property so assessed by you for

each tax year.

7. Have you, or either of you, paid taxes on all or any part of the property described in the Complaint in this suit? If so, attach to your answers to these interrogatories true and correct copies of all tax receipts issued to you, evidencing such payments.

8. Do you have any written instrument which authorized you, or either of you, to take possession of all or any part of the property for which this suit is brought? If so, attach a copy of such instrument or instruments to your answers to these interrogatories.

M. Corvey, Turner & Rogers

J. B. Blackburn

Attorneys for Plaintiffs.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, within and for said County in said State, personally appeared J. B. Blackburn, who, after being by me first duly and legally sworn, deposes and says: That he is one of the Attorneys for the Plaintiffs in the above named cause, that the answers to the foregoing interrogatories, if well and truly made, will be material testimony for the Plaintiffs in the said cause.

J. B. Blackburn

Sworn to and subscribed before me on this the 21st day of June, 1946.

Betty R. Buck

Notary Public, Baldwin County, Alabama. 11

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 49-50

To the Clerk of the Circuit Court of Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between Merchants National Bank, as Trustee, et al, Appellant s, and James Morris and Leon Morris, Appellee s,

wherein by said Court, ~~and~~ ~~Term~~, it was considered adversely to said appellant s, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant s:

ordered and adjudged Now, it is hereby certified, That it was thereupon considered/by our Supreme Court on the 6 day of October, 19 49, that said judgment of said Circuit Court be reversed and annulled, and the cause remanded to said court ordered and adjudged for further proceedings therein; and that it was further considered/that the appellee s pay James Morris and Leon Morris, pay

the costs accruing on said appeal in this Court and in the Court below for which costs let execution issue.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Capitol, this the 6 day of October, 19 49 J. Render Thomas Clerk of the Supreme Court of Alabama.

979

RECORDED

Anna Maria

Diary of Anna Maria
1794

974

RECORDED

DOROTHY PHILLIPS
COMPLAINANT

VS

RILEY PHILLIPS
RESPONDENT.

SUMMONS AND COMPLAINT.

*Filed July 31, 1943
R. Phillips*

RECORDED

No. _____

The State of Alabama,
BALDWIN COUNTY

IN EQUITY

CIRCUIT COURT OF BALDWIN COUNTY

DOROTHY PHILLIPS

COMPLAINANT

VS.

RILEY PHILLIPS

RESPONDENT.

NOTE OF TESTIMONY

Filed in Open Court this 31st

day of April 1942

[Signature]
Register.

994

~~RECORDED~~

Agreement

Filed July 21 1943
Produced
per

NO _____

The State of Alabama
BALDWIN COUNTY
CIRCUIT COURT

DOROTHY PHILLIPS

Complainant

vs.
MILBY PHILLIPS

Defendant

COMMISSION TO TAKE DEPOSITION

COMMISSIONER:

WITNESSES:

hvb

994

RECORDED

(4)

Meredith Industrial
Bank on Adams

Do

Mariss at al

Duane

Franklin
12-14-44

THE SUPREME COURT OF ALABAMA

October Term, 19 49-50

1 Div., No. 361

Merchants National Bank
as Trustee, et al

Appellant,

v.

James Morris and Leon
Morris

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF REVERSAL

The State of Alabama,

Baldwin County.

} Filed

this 8th day of Oct 19 49

Wingman
Clerk

Supreme Court of Alabama
Montgomery

July 27, 1955

J. ED LIVINGSTON, OF TUSCALOOSA
CHIEF JUSTICE
THOMAS S. LAWSON, OF GREENSBORO
ROBERT TENNENT SIMPSON, OF FLORENCE
DAVIS F. STAKELY, OF MONTGOMERY
JOHN L. GOODWYN, OF MONTGOMERY
PELHAM J. MERRILL, OF HEFLIN
JAMES J. MAYFIELD, OF TUSCALOOSA
ASSOCIATE JUSTICES
ARTHUR B. FOSTER, OF BIRMINGHAM
SUPERNUMERARY JUSTICE

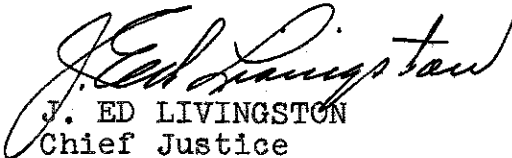
Mrs. Alice J. Duck
Circuit Clerk & Register
Baldwin County
Bay Minette, Alabama

Dear Mrs. Duck:

Please enter the enclosed order upon the
minutes of the court.

Thanking you, I am

Sincerely yours,


J. ED LIVINGSTON
Chief Justice

JEL/alm
Encl.

THE MERCHANTS NATIONAL BANK OF MOBILE,
A National Banking Association, as
Trustee, GEORGE E. FULLER and PATRICE
B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NO. 974.

APPEAL

Now come the Plaintiffs and appeal to the Supreme Court of the State of Alabama from the final judgment rendered in this cause on the 17th day of April, 1947, in which cause the Plaintiffs' motion for a new trial was overruled on January 15, 1949.

Dated this 2nd day of March, 1949.

M. C. Conroy, Turner, Rogers, Johnston & Adams
J. B. Blackburn
Attorneys for Plaintiffs.

THE MERCHANTS NATIONAL BANK OF
MOBILE, A National Banking
Association, as Trustee, GEORGE
E. FULLER and PATRICE B. FULLER,

PLAINTIFFS

VS

JAMES MORRIS and LEON MORRIS

DEFENDANTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

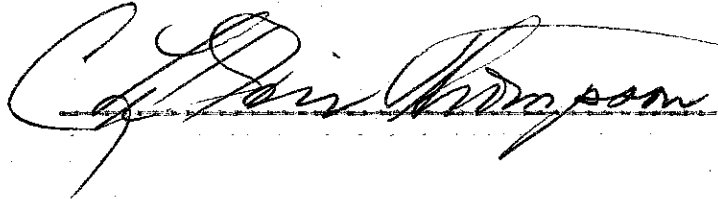
AT LAW.

NO. 974.

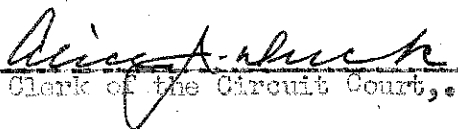
SECURITY FOR COSTS

I hereby acknowledge myself as Security for Costs of the Appeal taken
by the Defendants in this Cause to the Supreme Court of the State of Alabama
from the final judgment rendered in this Cause on the 23rd day of January,
1957, in which Cause the Defendants' motion for a new trial was overruled on
April 5, 1957.

Dated this 16 day of August, 1957.



Taken and approved on this the
16 day of August, 1957.


Clerk of the Circuit Court.

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the

April 18, 1947 ~~Monday~~ ^{XXXXXX}, 194

tain cause in said Court wherein Merchants National Bank et als

Plaintiff, and James Morris and Leon Morris

Defendant, a judgment was rendered against said

Merchants National Bank et als

to reverse which Plaintiffs, the said Merchants National Bank et als

applied for and obtained from this office an APPEAL, returnable to the

Term of our Supreme Court Court of the State of Alabama, to be held at Montgomery,

on the day of, 194 next, and the necessary bond

having been given by the said Merchants National Bank et als

with J. B. Blackburn, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said James Morris

and Leon Morris or Hon. H. M. Hall

....., attorney, to appear at the Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 4th

day of March, A. D., 194 9.

Attest:

Alice J. Duck, Clerk.

Filed April 10, 1956
Lance Dunning
Court Reporter

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Association, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 974

STIPULATION

In this cause it is agreed and stipulated by and between the parties hereto, acting by and through their respective attorneys, as follows:

1. Either party to this cause may introduce in evidence any written instrument heretofore introduced in evidence in this cause and which is now a part of the court file without the necessity of filing a motion to withdraw said written instrument or instruments and substituting a copy therefor.

2. Nothing in this stipulation shall be so construed as to make any written instrument admissible in evidence in this cause unless the same shall constitute legal evidence, and any written instrument so offered under the provisions of this stipulation shall be subject to any proper objection or objections.

Dated this 10th day of April, 1956.

J. B. Blackburn

Ben H. Turner

Attorneys for plaintiffs

Robert L. Lanning

Leon Morris

Attorneys for defendants

3/4/49
Service of the writ
accepted this day

J. M. Hall

Atty for James Morris v
Leon Morris

17

CIRCUIT COURT
Baldwin County, Alabama

MERCHANTS NATIONAL BANK et als

Vs. } Citation in Appeal

JAMES MORRIS and LEON MORRIS

Issued 4th day of March 1949.

STIPULATION

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Asso-
ciation, GEORGE E. FULLER and
PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 974

15

APPEAL

15

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Asso-
ciation, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,
VS.

JAMES MORRIS and LEON MORRIS,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NO. 974.

*Filed 3.3.49
Wesley W. Wicks
Clerk*

(6)

Given Charges
Merchants All Branch

15

Morris Bond

#5

"I charge you Gentlemen of the jury that the payment of taxes on property and an occasional trip over the land looking after it do not alone constitute "adverse possession".

Sineu
J. W. Hare, Judge

#6
Sineu
J. W. Hare
Judge

"I charge you Gentlemen of the jury that if you believe from the evidence that the defendants' predecessors in title were in possession of and claiming to own the land involved in this suit at the time the suit was filed and the decree rendered, then the decree would not be binding on the defendants."

15. The court charges the jury that the mere recording of a deed to a tract of land is not adverse possession of said land, and that the law does not require the owner of land to take notice of any deed purporting to convey his title which another may have recorded.

Sineu
J. W. Hare, Judge

3. The Court charges the jury that if you are reasonably satisfied from the evidence in this case that The Old Spanish Fort Development Company, a Corporation established its title to the lands involved in this suit by a suit to quiet title against all of Section 38, Township 4 South, Ranges 1 and 2 East and against all persons claiming any right or title to the said land or any part thereof, and that the Plaintiffs in this suit derive title to the said lands from The Old Spanish Fort Development Company, a Corporation, the title of The Old Spanish Fort Development Company, a Corporation, so established, shall be treated and considered by you as though it had been established in favor of the Plaintiffs in this case and your verdict should be for them.

Sineu
J. W. Hare
Judge

2. The Court charges the jury that when title to land is established in any person or corporation, in a suit against the land and against all persons claiming any right or title thereto, it inures to the benefit of all persons who derive title to the said lands from or through the person or corporation in whose favor such title or interest is established and such title or interest shall be at all times treated and considered as though it had been established in favor of the person or corporation so procuring or deriving title.

Sineu
J. W. Hare
Judge

*Swinn
F. W. Hare
Judge*

13. The Court charges the jury that although there was a decree quieting title to the land involved, if the Defendants or their predecessors in title were in possession at the time of said decree and have remained in possession, they are adverse holders, and may by such adverse possession for the necessary period of time acquire title.

#12

"The Court charges the jury that the mere recording of a deed, or a decree, to a tract of land is not adverse possession of said land, and that the law does not require the owner of land to take notice of any deed, or decree, purporting to convey his title which another may have recorded."

*Swinn
F. W. Hare, Judge*

#14

"I charge you Gentlement of the jury that an occasional entry on land alone will never ripen into adverse possession against the true owner."

Swinn, F. W. Hare, Judge

#10

"The Court charges the jury that the possession of land is a fact continuous in its nature, and when once shown to exist it will be presumed to continue until or unless the contrary is shown."

*Swinn
F. W. Hare
Judge*

THE MERCHANTS NATIONAL BANK
OF MOBILE, A National Banking
Association, as Trustee, GEORGE
E. FULLER and PATRICE B. FULLER

PLAINTIFF

VS

JAMES MORRIS AND LEON MORRIS

DEFENDANTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 974

Now comes the Defendants, James Morris and Leon Morris in their own proper person and represent and show unto the court as follows:

1.

That this cause has heretofore, on two occasions, been tried before juries in this court.

2.

That the Defendants have not waived their right to a trial, of the issues involved in this cause, by a jury.

3.

That the Defendants have not authorized or empowered any one to waive their right to a trial, of the issues involved in this cause, by a jury.

4.

That the Defendants have not consented that this cause be transferred from the jury to the non-jury docket of this court.

5.

That the defendants have not authorized or empowered any body to consent that this cause be transferred from the jury to the non-jury docket of this court.

6.

That the Defendants have at all times, and do now, insist upon and demand a trial of the issues involved in this cause, by a jury.

7.

That the transfer of this cause from the jury to the non-jury docket of this court was without the consent and approval of the Defendants, and that they have not, and do not ratify such removal.

8.

Wherefore the Defendants move the court to re-transfer this cause from the non-jury to the jury docket of this court and grant them a trial by a jury.

James Morris
D. L. Morris

STATE OF ALABAMA
BALDWIN COUNTY

Before me the undersigned authority in and for said County, in said State, personally appeared James Morris and Leon Morris, who are known to me and who having been by me first duly sworn, depose and say that the facts contained in the foregoing motion are true.

* James Morris
* D. L. Morris

Sworn to and subscribed before me on this the 14th day of December, 1950.

Samuel B. Cannon
Notary Public, Baldwin County, Ala.
Justice of the Peace

THE MERCHANTS NATIONAL BANK OF
MOBILE, A National Banking As-
sociation, as Trustee, GEORGE
E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 974.

MOTION FOR NEW TRIAL

Now come the Plaintiffs and move the Court to set aside the jury's verdict and grant a new trial in this cause and as grounds therefor, set down and assign, separately and severally, the following:

1. The verdict is contrary to the law.
2. The verdict is contrary to the evidence.
3. The verdict is contrary to the law and the evidence.
4. The Court erred in giving the following charge at the request of the Defendants:

"I charge you Gentlemen of the jury that an occasional entry on land alone will never ripen into adverse possession against the true owner."

5. The Court erred in giving the following charge at the request of the Defendants:

"I charge you Gentlemen of the jury that the payment of taxes on property and an occasional trip over the land looking after it do not alone constitute 'adverse possession'".

6. The Court erred in giving the following charge at the request of the Defendants:

"I charge you Gentlemen of the jury that if you believe from the evidence that the defendants' predecessors in title were in possession of and claiming to own the land involved in this suit at the time the suit was filed and the decree rendered, then the decree would not be binding on the defendants."

7. The Court erred in giving the following charge at the request of the Defendants:

"The Court charges the jury that the possession of land is a fact continuous in its nature, and when once shown to exist it will be presumed to continue until or unless the contrary is shown."

13. The Court, in a part of its oral charge to the jury, erred in charging, in substance, as follows:

"If you are reasonably satisfied from the evidence in this case that Margaret Francisco, or anyone through whom the Defendants claim title, was in possession of the land involved in this suit at the time the suit to quiet title to the said property was filed and at the time the Final Decree was rendered therein, a certified copy of which decree was introduced in evidence in this case and which is identified as Plaintiffs' Exhibit 4, this decree is void as to such party or parties in possession, unless he or they were named as parties respondent in the suit."

14. The jury, in arriving at its verdict in this case, erroneously assumed that if a verdict was rendered for the Plaintiffs, they would be compelled to give a judgment in favor of the Plaintiffs and against the Defendants for Five Thousand Dollars (\$5000.00) and for the property sued for, because of which they returned a verdict for the Defendants.

15. The jury's verdict in this case was based on an immaterial issue.

McCormy, Turner, Rogers, Johnston & Adams

J. T. Blackburn
Attorneys for Plaintiffs.

*Presented to me this 12th day of June 1947
and ordered continued to Wednesday, July
9th 1947-*

J. W. Hare
Circuit Judge

Ordered continued to July 16, 1947-

This July 9th 1947

J. W. Hare

*Submitted and taken under advisement
this July 16, 1947- J. W. Hare*

over

THE MERCHANTS NATIONAL BANK OF MOBILE,
A National Banking Association, as
Trustee, GEORGE E. FULLER and PATRICE
B. FULLER,

VS.

Plaintiffs,

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 974.

MOTION FOR NEW TRIAL

Now come the Plaintiffs and move the Court to set aside the jury's verdict and grant a new trial in this cause and as grounds therefor set down and assign, separately and severally, the following:

1. The verdict is contrary to the law.
2. The verdict is contrary to the evidence.
3. The verdict is contrary to the law and the evidence.
4. The Court erred in excluding the certified copy of the deed from Ecadore Burwell to Agness B. Lott, dated October 9, 1925 and recorded in Deed Book 37 N. S. at pages 308-9, Baldwin County, Alabama Records, which had been introduced in evidence by the Plaintiffs as color of title and was identified as Plaintiffs' Exhibit 3.
5. The Court erred in refusing the following charge requested by the Plaintiffs:
 - "1. The Court charges the Jury that if you believe the evidence in this case, your verdict should be for the Plaintiffs."
6. The Court erred in refusing the following charge requested by the Plaintiffs:
 - "2. The Court charges the Jury that when title to land is established in any persons or corporation in a suit against the land and against all persons claiming any right or title thereto, it inures to the benefit of all persons who derive title to the said lands from or through the person or corporation in whose favor such title or interest is established and such title or interest shall be at all times treated and considered as though it had been established in favor of the person or corporation so procuring or deriving title."
7. The Court erred in refusing the following charge requested by the Plaintiffs:

"3. The Court charges the Jury that if you are reasonably satisfied from the evidence in this case that The Old Spanish Fort Development Company, a Corporation established its title to the lands involved in this suit by a suit to quiet title against all of Section 38, Township Four (4) South, Ranges One (1) and Two (2) East and against all persons claiming any right or title to the said land or any part thereof, and that the Plaintiffs in this suit derive title to the said lands from The Old Spanish Fort Development Company, a Corporation, the title of The Old Spanish Fort Development Company, a Corporation, so established, shall be treated and considered by you as though it had been established in favor of the Plaintiffs in this case and your verdict should be for them."

8. The Court erred in refusing the following charge requested by the Plaintiffs:

"4. The Court charges the Jury that the Final Decree in the case of The Old Spanish Fort Development Company, a Corporation versus Section 38, Township 4 South, Ranges 1 and 2 East in Baldwin County, Alabama with other lands, and against all persons claiming any right or title to the said lands, a certified copy of which is in evidence in this case, became final against all persons other than minors, lunatics and those whose right of possession is postponed until the happening of some future event, at the expiration of six months from the date thereof and if you are reasonably satisfied from the evidence in this case that the Plaintiffs in this case derive title to the lands involved in this present proceeding from or through The Old Spanish Fort Development Company, a Corporation, your verdict should be for the Plaintiffs."

9. The Court erred in refusing the following charge requested by the Plaintiffs:

"10. The Court charges the Jury that title to the lands involved in this proceeding has already been adjudicated and established in The Old Spanish Fort Development Company, a Corporation by a decree of the Circuit Court of Baldwin County, Alabama, Equity Side, by the decree dated October 10, 1927, a certified copy of which is in evidence in this case and if you are reasonably satisfied from the evidence in this case that the Plaintiffs derive title to said lands from or through the Old Spanish Fort Development Company, a Corporation, they are entitled to a judgment for possession of the four acre tract involved in this proceeding."

"10. The Court erred in refusing the following charge requested by the Plaintiffs:

"13. The Court charges the jury that although there was a decree quieting title to the land involved, if the defendants or their predecessors in title were in possession at the time of said decree and have remained in possession, they are adverse holders and may by such adverse possession for the necessary period of time acquire title."

11. The Court erred in giving the following charge requested by the Defendants:

"1. The Court charges the jury that if they believe from the evidence in this case that the defendants and those under whom they hold title have been in the open, notorious, continuous, adverse possession of the land involved under a claim of ownership for more than ten years next before the beginning of this suit, the

defendants would be entitled to recover."

12. The Court erred in giving the following charge requested by the Defendants:

"2. The Court charges the jury that to constitute an actual possession of land it is only necessary to put it to such use or exercise such dominion over it as in its present state it is reasonably adapted to."

13. The Court erred in giving the following charge requested by the Defendants:

"4. The Court charges the jury that the possession of land is a fact continuous in its nature, and when once shown to exist it will be presumed to continue until or unless the contrary is shown."

14. The Court erred in giving the following charge requested by the Defendants:

"5. The Court charges the jury that the plaintiffs in this case must rely upon the strength of their own title, and not upon the weakness of defendants' title, and, if the plaintiffs have failed to show a complete right to recover on the strength of their own title, then they cannot recover, even though the defendants have failed to make out a complete title."

15. The Court erred in giving the following charge requested by the Defendants:

"6. The Court charges the jury that if, upon the evidence before them and the charge of the Court, they are unable to say that plaintiffs have shown a better title than defendants have shown by their evidence, that the plaintiffs are not entitled to recover."

16. The Court erred in giving the following charge requested by the Defendants:

"7. The Court charges the jury that the mere recording of a deed, or a decree, to a tract of land is not adverse possession of said land, and that the law does not require the owner of land to take notice of any deed, or decree, purporting to convey his title which another may have recorded.

17. The Court erred in giving the following charge requested by the Defendants:

"8. The Court charges the jury that a party may be in possession of property, holding the same adversely, although the same may not be inclosed, nor have any other improvements on the same."

18. The Court erred in giving the following charge requested by the Defendants:

"9. The Court charges the jury that the burden of

proof in this case is on the plaintiffs to make out their case to your reasonable satisfaction; and until they have done so the defendants are not required to prove anything to entitle them to a verdict."

19. The Court erred in giving the following charge requested by the Defendants:

"11. The Court charges the jury that the running of adverse possession of land for the prescriptive period, or the statute of limitations of 10 years defeats previously existing record title to the contrary, and thereafter a conveyance by holder of apparent record title is ineffectual to convey title as against adverse possession and title so acquired."

20. The Court erred in giving the following charge requested by the Defendants:

"14. I charge you Gentlemen of the jury that if you believe from the evidence that the defendants' predecessors in title were in possession of and claiming to own the land involved in this suit at the time the suit was filed and the decree rendered, then the decree would not be binding on the defendants."

21. The Court erred in giving the following charge requested by the Defendants:

"15. I charge you Gentlemen of the jury that if you believe from the evidence that the road crossing the end of the property involved was a public road, then such road does not constitute possession on the part of the Plaintiffs."

22. The Court erred in giving the following charge requested by the Defendants:

"16. I charge you Gentlemen of the jury, that if you believe from the evidence that the defendants predecessors in title were in possession of the property involved, claiming to own the same, at the time of the execution of the deeds from Lott to Hiram H. Maynard and from Hiram H. Maynard to Old Spanish Fort Development Company, then such deeds are void as to the defendants, and their predecessors in title.."

M. S. Corvey, Turner & Rogers

J. B. Blackburn

Attorneys for Plaintiffs. 16

Presented this January 14th 1947 and set
for hearing February 3rd 1947.

J. M. Hare

Submitted & taken under judge
advisement - Briefs to be furnished
This 2/2/47 - J. M. Hare
Judge

This motion was submitted and taken under advisement on July 16th 1947, the parties to furnish the Court briefs. These briefs were not furnished until about 30 days ago.

I do not believe that it is the law in Alabama that any judge can render an irrevocable decree depriving an unsuspecting citizen of his home which he is occupying under claim of ownership without giving him any notice of the proceeding.

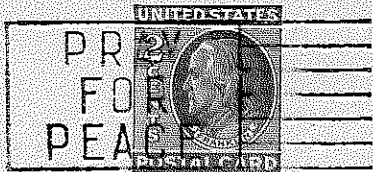
The motion for a new trial is ordered overruled and denied.

This Jan. 15th 1949

F. M. Hale
Judge



THIS SIDE OF CARD IS FOR ADDRESS



MRS. ALICE J. DUCK
CLERK BALDWIN CIRCUIT COURT
BAY MINETTE, ALABAMA

1st Div. No. 754

Baldwin

No. 974 Circuit Court

JAMES MORRIS: LEON MORRIS

Appellant.^s

vs.

THE MERCHANTS NATIONAL BANK OF MOBILE

Appellee.

Dear Mrs. Duck:

~~DEAR SIR~~

CERTIFICATE OF APPEAL

in the above case

The _____
was today received and filed in this office.

Yours truly,

THURSDAY,

J. RENDER THOMAS,

SEPTEMBER 19, 195 7

Clerk Supreme Court.

REQUEST FOR DECREE IN VACATION

Printed by The Baldwin Times

State of Alabama,
Baldwin County.

} NO. _____

_____ TERM, 1943.

DOROTHY PHILLIPS

Complainant—

VS.

RILEY PHILLIPS

Respondent—

TO R. S. DUCK, REGISTER:

In the above stated cause a an answer and waiver having been filed by the Respondent,

~~having been~~ _____ the Respondent—,
and evidence having been taken, and the cause being ready for submission for final decree, and
no defense having been interposed, the complainant—, by Beebe & Hall
Solicitor—s of record, now files with the Register of this Court this written request to deliver the
papers in this cause to the Judge for final decree in vacation.

BEEBE & HALL

BY *Hurstall*
Solicitor— for Complainant—.

RECORDED

NO. _____

DOROTHY PHILLIPS

Complainant—

VS.

RILEY PHILLIPS

Respondent—

Request For Decree In Vacation

Filed July 31, 1942

R. Deed

Register.

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT
Dec. Term, 1946
Case No. 974

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon ^{J. Crawford} ~~W. L. Durant, Carter Smith,~~
~~W. O. Rice, Harvey L. Stanton~~
if to be found in your County, at the instance of the plaintiff

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House there-

of, by 9 o'clock of the forenoon, on the 20th day of Dec., 1946

and from day to day and term to term of said Court until discharged by law, then and there to testify, and

the truth to say, in a certain cause pending, wherein Merchants National Bank Plaintiff
as Trustees et als.

and James Morris & Leon Morris Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 20th day of Nov., 1946

Alice J. Duck Clerk

1397
80

Mobile

ORIGINAL

T

Received in office this _____ day of _____

194

SHERIFF

I have executed this writ

*by serving a copy on
Walter Smith and
Harvey L. Stanton
Captains for Dr. W. Latt
and Dr. L. H. Curant
returned not found*

No. *974*

Page _____

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

*Merchants National Bank
of Mobile, et al.*

Plaintiff

VS.

*James Morris and
Leon Morris*

Defendant

CIVIL SUBPOENA

Issued this *20th* day of

Nov.

194 *6*

Alvin J. Duck
Clerk.

H. W. Walcombe

SHERIFF

*H. G. Crawford - D. S.
J. M. Permatin - A. S.*

Subpoena—ORIGINAL—In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he shall be barred. Times Prtg. Co., Bay Minette.

**THE STATE OF ALABAMA
BALDWIN COUNTY**

Mobile
} Case No. 974 Nov Term, 1946
CIRCUIT COURT

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon John Alexander (Mobile)

if to be found in your County, at the instance of the deft

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House there-

of, by 8:30 o'clock of the forenoon, on the 6th day of November, 1946

and from day to day and term to term of said Court until discharged by law, then and there to testify, and

the truth to say, in a certain cause pending, wherein Merchants National Bank Plaintiff

and James Morris & Leon Morris Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 26th day of Oct, 1946

R. S. Duck Clerk

(7)

MAIO

received in office this _____ day of _____

194

SHERIFF

I have executed this writ

by leaving a copy at the residence of John Alexander the 4th day of November, 1946

W. W. Holcomb

SHERIFF

By: M. Bernstein, D. S.

Mobile County

1387

ORIGINAL

No. 974

Page

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

Merchants National Bank

Plaintiff

VS.

James Morris
Leon Morris

Defendant

CIVIL SUBPOENA

Issued this 26th day of

Oct

1946

R. S. Duck

Clerk.

THE STATE OF ALABAMA, Baldwin County.

S. D. Page No. _____ CIRCUIT COURT

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS: Case No. 974 Dec Term, 1946

YOU ARE HEREBY COMMANDED TO SUMMON John Alexander

Tanchope Mobile, Ala.

if to be found in your County, at the instance of the est
to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House

thereof, by 9:00 o'clock of the forenoon, on the 2nd day of Dec, 1946, and from day

to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a
certain cause pending, wherein Merchants Nat. Bank, Plaintiff and James Morris et al Defendant.

Herein fail not, and have you then and there this Writ.

Given under my hand and seal, this 23rd day of Nov 1946

Alice J. Luck CLERK.

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

Case No. 974 Dec. Term, 1946

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon Sam Russell, Jeff C. Evans, Jack Quinlan, Sam Quinlan, Claude Yancy, et al., Keaham, J. T. Wrester, John Alexander if to be found in your County, at the instance of the defendant

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House there-

of, by 9 o'clock of the forenoon, on the 23rd. day of Dec., 1946

and from day to day and term to term of said Court until discharged by law, then and there to testify, and

the truth to say, in a certain cause pending, wherein Merchants National Bank as Trustee et al. Plaintiff

and James Morris & Leon Morris Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 23rd. day of Nov. 1946

Alice J. Vuck Clerk

Received in office this _____ day of _____

194

SHERIFF

I have executed this writ

copy on

by serving

*Sam Burrell
Jeff Evans
Jack Quinlan
Sam Quinlan
Clarence Yancy
J. F. Wootter*

Dec 2 1946

C. E. Garrett
SHERIFF
H. F. Hall Deputy

ORIGINAL

No. *974*

Page _____

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

*Merchants National
Bank as Trustee et al*

Plaintiff

VS.

*James Marrie and
Leon Marrie*

Defendant

CIVIL SUBPOENA

Issued this *23rd* day of

November 194*6*

Alicia J. Duck
Clerk.

THE STATE OF ALABAMA
BALDWIN COUNTY

} Case No. 974
CIRCUIT COURT
Dec. Term, 1946

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon John Alexander

if to be found in your County, at the instance of the defendant

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House there-

of, by 9 o'clock of the forenoon, on the 2 day of Dec., 1946

and from day to day and term to term of said Court until discharged by law, then and there to testify, and

the truth to say, in a certain cause pending, wherein Merchants National Bank as Trustee et al Plaintiff

and James Marrie and Leon Marrie Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 23rd day of Nov. 1946

Alicia J. Duck Clerk

Mobile

8

ORIGINAL

Received in office this _____ day of _____

194

No. 974

Page _____

THE STATE OF ALABAMA
Baldwin County

SHERIFF

CIRCUIT COURT

I have executed this writ

*Merchants National
Bank as Trustee et al.*

Plaintiff

VS.

*James Marris
and Leon Marris*

Defendant

CIVIL SUBPOENA

Issued this 23rd. day of

Nov. 1946

Alex J. Truck

Clerk.

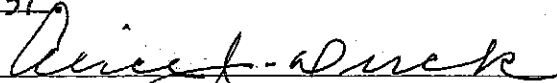
SHERIFF

Received
Retained
Not found in my County after diligent search
and inquiry.
11-25-46
L. R. 46
M. E. HOLCOMBE, Sheriff
By *Walter J. ...*

filed security for cost of appeal, to the Supreme Court, on
the 16th day of August 19 57, and that C. LeMoir Thompson,
,
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the _____
day of September 19 57, served on Hon. J. B. Blackburn
as attorney of record for said appellee, and that the amount sued for
was certain Lands Dollars. (Or certain lands)
(Or personal property.)

Witness my hand and the seal of this Court, this the 16th
day of September 19 57.


Clerk of the Circuit Court of

Baldwin County, Alabama.

Judgment Entry

MERCHANTS NATIONAL BANK,
as Trustee, et al,

Plaintiff,

VS.

JAMES MORRIS AND LEON MORRIS,
Defendants.

FALL TERM, 1946

DECEMBER 2, 1946

This day came the Plaintiffs and their attorneys, and also came the Defendants and their attorney, and the Defendants disclaimed all right, title and interest in and to all of the property sued for except the tract described in their Disclaimer:

It is, therefore, considered by the ^{Court} Plaintiffs that the Plaintiffs have and recover of the Defendants the following described land, ^{disclaimed by the Defendants and} situated in Baldwin County, Alabama, to-wit: ~~4~~ ()

(Copy description from Complaint, but at end of description of Alexis Troulette grant, except 4 acres described in the Defendants' Disclaimer.)

THE MERCHANTS NATIONAL BANK OF
MOBILE, A National Banking As-
sociation, as Trustee, GEORGE
E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 974

MOTION TO STRIKE

Now come the Plaintiffs, by their attorneys, and move the Court to strike the motion filed in this cause by the Defendants on January 2, 1951 to transfer this cause from the non-jury docket to the jury docket of this court and as grounds for said motion set down and assign, separately and severally, the following:

1. It is prolix.
2. The Defendants have waived their right to have this cause tried by a jury.
3. The Defendants are now estopped from demanding a trial of this cause by jury.
4. At a regular jury term of the Circuit Court of Baldwin County, Alabama held on November 15, 1949, at which J. B. Blackburn, one of the attorneys for the Plaintiffs, and H. M. Hall, the attorney for the Defendants, were present in open court, it was agreed by the Defendants, acting through their said attorney, H. M. Hall, that the Plaintiffs' demand for a jury trial be withdrawn and at said time and place the Defendants, acting through their said attorney, consented that the Plaintiffs' demand for a jury trial of this cause be withdrawn and the Court made the following notation on the docket sheet: "11-15-49. Demand for jury trial withdrawn by consent of the parties. Cause continued. (Signed) Telfair J. Mashburn, Jr., Judge," because of all of which the Defendants waived their right to have a jury trial of this cause.
5. At a regular jury term of the Circuit Court of Baldwin County, Alabama held on November 15, 1949, at which J. B.

Blackburn, one of the attorneys for the Plaintiffs, and H. M. Hall, the attorney for the Defendants, were present in open court, it was agreed by the Defendants, acting through their said attorney, H. M. Hall, that the Plaintiffs' demand for a jury trial be withdrawn and at said time and place the Defendants, acting through their said attorney, consented that the Plaintiffs' demand for a jury trial of this cause be withdrawn and the Court made the following notation on the docket sheet: "11-15-49. Demand for jury trial withdrawn by consent of the parties. Cause continued. (Signed) Telfair J. Mashburn, Jr., Judge", because of which the Defendants waived their right to have a jury trial of this cause and are now estopped to demand that this cause be retransferred to the jury docket of this court.

6. The Defendants, acting through their attorney, H. M. Hall, consented in open court on November 15, 1949 that Plaintiffs' demand for a jury trial in this cause be withdrawn and thereby waived their right to have this cause tried by a jury.

7. The Defendants, acting through their attorney, H. M. Hall, waived their right to have a jury trial of this cause on November 15, 1949 and did not file the said motion to retransfer this cause to the jury docket until January 2, 1951. During the period of time that elapsed between November 15, 1949 and the time the said motion was filed on January 2, 1951, the Spring and Fall jury terms of the Circuit Court of Baldwin County, Alabama were held, because of which the said motion was filed too late and the said Defendants are now estopped to insist that this cause be retransferred to the jury docket of this court.

M^c Conway, Turner, Rodgers, Johnston & Adams
J. B. Blackburn,
Attorneys for Plaintiffs.

THE MERCHANTS NATIONAL BANK OF)	IN THE CIRCUIT COURT OF
MOBILE, A National Banking)	BALDWIN COUNTY, ALABAMA
Association, as Trustee, GEORGE)	
E. FULLER and PATRICE B. FULLER,)	AT LAW
)	NO.974
Plaintiffs,)	
VS.)	
)	
JAMES MORRIS and LEON MORRIS,)	
)	
Defendants.)	

DEMURRER.

Now come the Plaintiffs by their attorneys and demur to the Motion filed in this cause by the Defendants on January 2, 1951, and to each and every paragraph thereof, separately and severally, and as grounds therefor set down and assign separately and severally the following:

1. No facts are alleged which will authorize this court to retransfer this cause to the jury docket.
2. It does not allege who consented that the cause be transferred from the jury docket to the non jury docket of this court.
3. No facts are alleged to show that the person, or persons, who consented that this cause be transferred from the jury to the non jury docket of this court was not the attorney for the Defendants in this cause.
4. No facts are alleged to show that the Defendants are not bound by the acts of the person, or persons, who consented that this cause be transferred from the jury to the non jury docket of this court.

W. C. Corney, Turner, Rogers, Johnson & Adams

J. B. Bashlun

Attorneys for Plaintiffs.

nc. 666

The Original Bill of Complaint of this file is in the file of Merchants National Bank Vs. James Morris and Leon Morris as it was an exhibit.

974

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking As-
sociation, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. _____.

|| LIS PENDENS NOTICE

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Plaintiffs named in this suit did, on the 21st day of June, 1946, file in the Circuit Court of Baldwin County, Alabama, Law Side, an Ejectment Suit to recover from the Defendants the following described property situated in Baldwin County, Alabama, to-wit:

Fractional Section 19, Township 4 South, Range 2 East.

Subdivision "F" of Fractional Section 30, Township 4 South, Range 2 East.

The Alexis Trouillette Grant, Section 38, Township 4 South, Ranges 1 and 2 East.

The Lefroy Trouillette Grant, Section 39, Township 4 South, Ranges 1 and 2 East, except 9 acres, more or less, which said excepted property is described as follows: Commencing at a point within the limits of said Section 39, which said point marks the intersection of the South line of Section 17 extended in Township 4 South of Range 2 East with the extension of the West line of said Section 17, which point would, if the Section were a regular government section, be the Southwest Corner of said Section 17, and Northwest Corner of Section 20, Northeast Corner of Section 19 and Southeast Corner of Section 18, which said point was originally established by the Federal Government, which lies within the limits of said Section 39. From said point thus described, run North 491.08 feet, thence due West 2038.5 feet to a stake, which marks the beginning corner of this said excepted tract, thence South 38 degrees West 625.68 feet to a stake, thence North 52 degrees West 650 feet to the Easterly margin of Minette Bay, thence Northeastwardly along the margin of the said bay 625 feet, more or less, to a point, which is North 52 degrees 0 minutes West and 658 feet from the point of beginning; thence South 52 degrees 0 minutes East 658 feet to the point of beginning.

All persons are cautioned against purchasing the said property, or any part thereof, or attempting to acquire any interest therein from the Defendants, or either of them, except subject to the rights of the said Plaintiffs.

DATED this 21st day of June, 1946.

STATE OF ALABAMA, BALDWIN COUNTY

Filed June 21, 1946.....11a.M

Recorded Lis Pend. book 2 page 87-8

E. M. Stewart
Judge of Probate & C.

M. C. Corvey, Turner & Rogers

J. T. Blackburn
Attorneys for Plaintiffs. 11

JUDGMENT ENTRY

Plaintiffs' motion for a new trial heretofore filed and submitted in this cause is granted and this cause is hereby ordered reinstated on the docket.

Dated this 27th day of February, 1947.

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Asso-
ciation, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 974

ORDER OF JUDGE RECUSING SELF

Having acted as attorney for the defendants in this case from the time that it was filed up to the time that I became Judge of the Twenty-eighth Judicial Circuit of Alabama, I am disqualified to try this case and, therefore, recuse myself.

ORDERED AND ADJUDGED on this the 4 day of May, 1955.

Hubert M. Hill
Judge

19

ORDER OF JUDGE RECUSING SELF

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Asso-
ciation, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 974

FILED
MAY 4 1955
ALICE E. DICK, Clerk

THE STATE OF ALABAMA, Baldwin County.

S. D. Page No. _____ CIRCUIT COURT

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

Case No. 974 Dec. Term, 1946

YOU ARE HEREBY COMMANDED TO SUMMON

W. O. Lott,
160 Rapier Street, Mobile, Ala.

if to be found in your County, at the instance of the plaintiff
to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House

thereof, by 9 o'clock of the forenoon, on the 2nd day of Dec., 1946, and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a

certain cause pending, wherein Merchants National Bank as Plaintiff Plaintiff and _____ Defendant.

Herein fail not, and have you then and there this Writ.

Given under my hand and seal, this 20th day of Nov., 1946

Gone to Baltimore, Md.

Alice J. Wuck CLERK.

THE STATE OF ALABAMA, Baldwin County.

S. D. Page No. _____ CIRCUIT COURT

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

Case No. 974 Dec. Term, 1946

YOU ARE HEREBY COMMANDED TO SUMMON

W. L. Warrant
Warrant Engineering Co., St. Francis St., Mobile, Ala.

if to be found in your County, at the instance of the plaintiff
to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House

thereof, by 9 o'clock of the forenoon, on the 2nd day of Dec., 1946, and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a

certain cause pending, wherein Merchants National Bank Plaintiff and James Morris & Leon Morris Defendant.

Herein fail not, and have you then and there this Writ.

Given under my hand and seal, this 20th day of Nov., 1946

Alice J. Wuck CLERK.

MAY 22 1958

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1957-58

1 Div. 754

James Morris, et al.

v.

The Merchants National Bank, as Trustee

Appeal from Baldwin Circuit Court

MERRILL, JUSTICE.

This cause has been before us twice. It is an ejectment suit and the first trial resulted in a jury verdict for defendants. We reversed on the ground that defendants in that suit were permitted to attack collaterally a decree in equity in 1927 involving the same lands. 252 Ala. 366, 42 So. 2d 240.

2.

The cause was again here on petition for writ of mandamus to vacate an order transferring the cause to the jury docket after the parties had consented to a trial without a jury. The writ was awarded. 257 Ala. 663, 60 So. 2d 684.

The second trial before the court without a jury resulted in a judgment for plaintiffs. After motion for a new trial was overruled, the present appeal was taken.

The controversy is over four acres of more or less "wild" land in Section 38, Township 4 South, Range 1 East, in Baldwin County.

The main question argued by appellants is that the trial court should have allowed them to impeach and show to be void a decree of the equity court of Baldwin County in 1927 quieting title to said Section 38 in Old Spanish Fort Development Company, under whom, by means conveyances, appellees claim title. We consider that question was settled in Merchants Nat. Bank of Mobile v. Morris, 252 Ala. 566, 42 So. 2d 240, where we held that the bill in equity in the 1927 suit "contained all the statutory allegations to confer jurisdiction" and the "decree adjudged that they existed"; that "by statute the decree has binding effect on persons not parties, if all the requirements are observed"; Tit. 7, § 1127, Code 1940; that "one cannot collaterally attack a domestic judgment valid on the face of the record" but "he is confined to a direct attack, sometimes by a suit in equity in the nature of a bill of review", or "section 1128, Title 7, Code," or "sometimes

4.

suit which was filed June 21, 1946. This produced a direct conflict in the testimony as to which party was in possession and the trial court resolved that conflict in favor of appellees. We cannot say the trial court was plainly wrong because there was considerable evidence to support his finding.

Moreover, there are other reasons why John Alexander could not claim adverse possession after the decree in 1927. The statute, Tit. 7, § 826, Code 1940, requires color of title and assessment of the land for taxes for ten years. Alexander had no color of title made after the 1927 decree and never listed the land for taxation. He could not claim title by descent cast as provided by the statute because he could point to no predecessor in title who was in possession of the property after the 1927 decree, or to a devise from a predecessor in title after that time.

Alexander's deed to appellants was executed and recorded in 1941. It could be no more than color of title. Since this suit was filed in 1946, appellants' possession was less than five years even if it be conceded that they were in the exclusive possession of the property. This does not meet the statutory requirements for adverse possession. Tit. 7, § 828.

Apart from the questions of law already discussed, only a question of fact was presented, and that was resolved by the trier of the facts in favor of appellees.

The lower court correctly overruled the motion for a new trial and the judgment is due to be affirmed.

AFFIRMED.

Livingston, C. J., Lawson and Coleman, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 754

JAMES MORRIS, ET AL. Appellants

vs.

THE MERCHANTS NATIONAL BANK, AS TRUSTEE Appellee,

From BALDWIN Circuit Court.

The State of Alabama,
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to **FOUR** inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the **22nd** day of

MAY, 19 58

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Association,
as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

vs.

JAMES MORRIS and LEON MORRIS,

Defendants.

No. 974

BRIEF OF J. B. BLACKBURN AND MCCORVEY, TURNER, ROGERS,
JOHNSTONE & ADAMS, ATTORNEYS FOR PLAINTIFFS, ON PLAINTIFFS'
MOTION FOR A NEW TRIAL PENDING BEFORE THE
HONORABLE FRANCIS W. HARE, JUDGE OF THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA

While the Plaintiffs insist upon the several grounds, separately and severally assigned in their motion for a new trial, it is our sincere thought that the real point at issue lies in the Court's treatment of the effect of the final decree, introduced and admitted into evidence under the terms of which the title of Plaintiffs' predecessor to the property involved was quieted. The question presents itself through charges given at the request of the Defendant and other charges requested by the Plaintiffs and refused by the Court. The title quieting proceedings upon which the decree referred to was based were proceedings in rem and brought under the so-called Grove Act, now appearing as Section 1116, et seq., Title 7, of the Code of Alabama of 1940. A statement of some of the provisions of this Act would seem to us as being helpful in presenting our respectful contentions:

Section 1116 provides when bills to quiet title in in rem

THE STATE OF ALABAMA }
Baldwin County

Circuit Court of Baldwin County, Alabama.
(In Equity)

DOROTHY PHILLIPS COMPLAINANT

VS.

RILEY PHILLIPS RESPONDENT

I, Bernice F. Reid

as Register and Commissioner

have called and caused to come before me Dorothy Phillips and Mrs. Claudia Presley

witness^{es} named in the Requirement for Oral Examination, on the 50th day of July

19⁴³, at the office of Beebe & Hall

in Bay Minette

, Alabama, and having first sworn said witness^{es} to speak the truth,

the whole truth, and nothing but the truth, the said Dorothy Phillips and Mrs. Claudia

Presley doth depose and say as follows:

My name is Dorothy Phillips. I am a bona fide resident of Baldwin County, Alabama, and over twenty one years of age. The Respondent, Riley Phillips is a bona fide resident of Baldwin County, over twenty one years of age.

The Respondent and I were married at Richmond, Indiana, on March 28th, 1936. We lived together as husband and wife until July 24th, 1943. We were living in Baldwin County, Alabama, at the time of the separation.

The Respondent has often threatened me, and his conduct is such as to give me reasonable apprehension to believe, and I do believe, that he will carry out his threats and do violence to my person, which would necessarily endanger my life and health.

We have one child, a son, a minor six years old, James Riley Phillips, who is now and has been all of his life, living with me. I live with my mother at Robertsdale, in Baldwin County, Alabama, where I have a home for myself and minor son. The Respondent does not have a home in Baldwin County, Alabama, all of his folks living in Tennessee.

I am in position to care for and maintain the said child.

Dorothy Phillips

Mrs. Claudia Pressley, a witness for Complainant, being duly sworn, deposes and says: My name is Mrs. Claudia Pressley. I live at Robertsdale, in Baldwin County, Alabama, where I have a home. My daughter, Dorothy Phillips and her minor child are now living with me. We are so situated that we are fully able to take care of and provide a place for my daughter and her child.

My daughter, Dorothy Phillips and her husband, Riley Phillips, have not been getting along so well for quite some time, and conditions have grown worse from time to time until now it is impossible for them to longer live together as husband and wife.

Claudia M. Presley

ORAL EXAMINATION

I, Bernice F. Reid, as Register and Commissioner hereby certify that the foregoing deposition~~s~~ on Oral Examination was taken down in writing by me in the words of the witness~~s~~ and read over to them and they signed the same in the presence of myself and of H. W. Hall at the time and place herein mentioned; that I have personal knowledge of personal identity of said witness^{es} or had proof made before me of the identity of said witness^{es}; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof.

I enclose the said Oral Examination in an envelope to the Register of said Court.

Given under my hand and seal, this 30th day of July, 19⁴³.

Bernice F. Reid (L. S.)

No. 974 Page _____

THE STATE OF ALABAMA
Baldwin County

IN CIRCUIT COURT, IN EQUITY

DOROTHY PHILLIPS

Complainant

Vs.

WILEY PHILLIPS

Respondent

ORAL DEPOSITION

Filed July 31, 1943

Register

RECORDED IN

Record

Vol. _____ Page _____

Register

proceedings may be filed. It is there provided that if one holds, and has held color of title to lands "for a period of ten or more consecutive years next preceding, and has paid taxes on the lands, or interest during the whole of such period, or if he, together with those through whom he claims, have held color of title and paid taxes on the land, or interest so claimed, during the whole of such period of time, or if he, or he and those through whom he claims, have paid taxes during the whole of such period of ten years on the lands, or interest claimed, and no other person has paid taxes thereon during any part of said period, he may, if no suit is pending to test his title to, interest in, or his right to the possession of such lands, file a verified bill of complaint in the Circuit Court of the county in which such lands lie against said lands and any and all persons claiming any title to, interest in, lien or incumbrance on said lands, or any part thereof, to establish the right or title to such lands, or interest, and to clear up all doubts or disputes concerning the same."

The Supreme Court of Alabama, in an opinion by Judge Somerville, has compared the personal proceedings to quiet title with the in rem proceedings above referred to, and in its opinion, said in part:

"The provisions of the act approved October 1, 1923 (Gen. Acts 1923, p. 699), known as the Grove Act, "To provide for the establishment of titles to real estate by a proceeding in rem," have been codified as article 2 of chapter 336 of the Code of 1923, comprising sections 9912 to 9928, inclusive. In the preceding chapter - sections 9905 to 9911, inclusive - the previous system of procedure for quieting titles is preserved intact. The two systems overlap as to bills of complaint by persons "in the actual peaceable possession" of the land in suit, with respect to relief against known respondents upon whom process is served, though the Grove Act requires specific allegations of the nature and source of the complainant's claim, which is not required by the previous system. But the

Grove Act extends the relief to cases where no one is in the actual possession, if the complainant, or he and those under whom he claims, has held color of title and paid the taxes for 10 or more consecutive years next preceding the suit (section 9912, subds. (b) and (c); and also to cases where the complainant - or he and his privies in claim - has paid the taxes during the whole of such period, and no other person has paid the taxes during any part of said period, regardless of the status of actual possession (section 9912, subd. (d). (Emphasis ours.) Miller, et al vs. Gaston, et al, 212 Ala. 519 (520).

Section 1117 prescribes the contents of a bill of complaint filed under this proceedings and requires, among other things, that it be shown "who, if anyone, has at any time within ten years, next preceding the filing of said bill of complaint, paid any taxes upon said lands, or any interest therein, or who is known to complainant to have been in possession of any part of said lands and who, if anyone, is known to complainant to claim said lands, or any part thereof, or any interest therein, and shall give the residence and address of such person or persons, if known." This section further requires that the bill must allege that complainant has exercised diligence to ascertain the facts alleged and what diligence the complainant actually exercised.

Sections 1118-19 provide for notice, and section 1120 provides that a copy of said notice be recorded as a "Lis Pendens" in the office of the Probate Judge of the County where the lands lie.

In this connection, we respectfully call your Honor's attention to Title 47, section 65, et seq. of the Code of Alabama of 1940, where it is required that the Judge of Probate of each County in this State "shall keep in his office as a public record, a suitable book to be called a Lis Pendens Record". It is evident that it was intended that this notice, recorded in the Lis Pendens Record, was intended to

give notice to the world, through a public record of litigation involving the property described therein and our Courts have held that the law of Lis Pendens is a rule of property. Federal Land Bank of New Orleans vs. Ozark City Bank, 225 Ala. 52 (55).

Section 1121 provides what the content of said notices shall be and this content is certainly sufficient to advise anyone who reads it, or anyone who has constructive notice of it, either through its publication, as directed, or through the lis pendens record, of the basis of the proceedings.

Coming now to Section 1123, we find that "color of title to said lands and payment of taxes by complainant, or those under whom he claims, for ten consecutive years next preceding the filing of the bill of complaint shall be prima facie evidence of title to said lands in complainant; proof of such color of title and payment of taxes for twenty years next preceding the filing of the bill of complaint shall be conclusive evidence of title against all persons other than minors, lunatics and those whose rights of possession have been postponed until the happening of some future event, and other than persons who have paid taxes upon said lands, or upon a part thereof, within such period of twenty years next preceding the filing of the bill of complaint."

May we digress here to say that the publication of notice and the recording of the Lis Pendens, all of which was done in the suit upon which the final decree under discussion is based, is certainly a sufficient notice to any person claiming title to the lands that his claim is being denied or disputed. Certainly the publication of such a notice and the recorded Lis Pendens would be sufficient to

give one in possession of the lands notice that his claim was being contested. I am not overlooking the fact that if one were actually in possession of lands, claiming them in good faith and with an open, notorious and visible possession, which would attract the attention of others, he could defeat an in rem proceedings to quiet title by appearing in the cause and setting up his possession. But assuming the proper allegations to the effect that no one other than complainant was in possession of the property and that no one other than complainant had paid taxes on the property during the period of twenty years, then, under the Statute, the proof of such possession and the payment of taxes becomes conclusive evidence of title against all who have not paid taxes within the last twenty years. In other words, one who has not paid any taxes has no standing in a proceedings of this kind. We should bear in mind that it was proven to a Court of competent jurisdiction at the time this decree was rendered that no one was in possession, other than complainant in said suit, and that no one other than the complainant had paid taxes on said property within the statutory period. The decree recites that such proof was made and on that proof, the decree was entered, quieting the title of the complainants. There is force in the provisions of the Statute (paragraph 1124) that the allegations of the bill shall not be taken as confessed and that in all cases, the interest or title sought to be established in or to the lands, must be shown by legal evidence. Under the averments of the decree, this was done.

Coming now to sections 1126 to 1128, inclusive, which deal with the contents and effect of the decree, we find the law provides as follows:

"If upon the hearing of the cause set out under section 1122 (the section which decrees when such suits are at issue), the title to the property, or any part of the property, described in the bill of complaint, or any interest claimed by complainant or cross-complainant in said property or any part thereof, be duly proven, the court shall decree the title to such property, or to the interest therein claimed in the bill of complaint to be in complainant or cross-complainant, or partly in one and partly in the other, specifying the part in or to which each has title or interest.

The court shall in the decree order that a certified copy thereof be recorded in the office of the judge of probate for the county in which the lands lie, and in the decree direct in whose names it shall be indexed on the direct index, and in whose names it shall be indexed on the indirect index of the record thereof. The register shall, within thirty days from the rendition of the decree, file a certified copy thereof in the office of the judge of probate for record, and tax the expense thereof as part of the cost of the case. The judge of probate shall record such copy in the same book and manner in which deeds are recorded, and index the same as in said decree ordered or directed. Said decree shall be binding upon all persons except as is hereinafter provided.

Any person may, during the pendency of proceedings under this article and within six months after the rendition of original final decree therein, intervene in said cause and file a cross bill therein, and propound his title to the property described in the bill of complaint, or to the interest therein sought to be established; but if more than two months has expired since the filing of the original bill of complaint, no person shall have the right to intervene who had knowledge of the published notice of said proceedings, or who had been otherwise informed of the pendency of the proceedings and what property, or interest therein was involved in such proceedings more than thirty days prior to the filing of said petition of intervention."

It will be specifically noted that section 1127 provides "said decree shall be binding upon all persons except as is hereinafter provided".

Section 1128 provides for intervention by any person during the pendency of the proceedings and within six months after the original final decree therein. This section further provides if more than

two months have expired since the filing of the original bill of complaint, no person shall have the right to intervene who had knowledge of the published notice of said proceedings, or who had been otherwise informed of the pendency of the proceedings, and what property or interest therein was involved in such proceedings more than thirty days prior to the filing of said petition or intervention.

Under this section, if the heir or heirs of Francisco had attempted to intervene in said proceedings at any time after two months, he or they would have been required to make a showing to the Court that he or they had no knowledge of the pendency of such proceedings more than thirty days prior to the filing of their petition or intervention. Assuming that some of the heirs of Francisco were in possession of the property at the time the bill upon which the decree in question is based was filed, it is inconceivable that they would not have had some notice of such proceedings, either through evidence of the ownership of the Old Spanish Fort Development Company, the complainants in the bill, the notices of publication or the Lis Pendens notice, either actual or constructive. To hold that such heirs, or those who claim under them, could, without making such showing, litigate with those who hold under the Old Spanish Fort Development Company - in this case, the Merchants National Bank, as Trustee, and Fuller - completely nullifies the meaning and effect of this section, limiting the right of intervention.

It is expressly provided by section 1131 that when title is established in any one under the provisions of the in rem proceedings, it shall inure to the benefit of all persons who derive title from or through the person in whose favor such title was established,

"and such title or interest shall be at all times treated and considered as though it had been established in favor of the person so procuring or deriving title".

From the evidence offered in the instant case, it is perfectly apparent that the Act in question was religiously followed in every detail; that the Court which rendered the decree in question had jurisdiction; that under the allegations and proof, the Plaintiff did everything in its power to ascertain the true status of the situation as it concerned the title and possession of the property involved in the litigation; that the 4-acre tract involved in the instant suit was part and parcel of the larger tract, the title to which was cleared through the decree, and that all of the known facts regarding the particular 4 acres were averred and proved; that the heirs of Francisco, under whom the defendants claim, had made no attempt to assess the property for taxation nor pay taxes thereon.

In the light of the circumstances, the question would seem to be whether the Statute which was followed is constitutional. This question has been answered by our Supreme Court in the affirmative and we respectfully submit that a solemn decree of a court of jurisdiction is not open to collateral attack as the Court has ruled in this particular instance, as evidenced by the charges given and refused and hereinabove referred to. The following principles and citations will support this contention:

The Act is constitutional. Miller vs. Gaston, 212 Ala. 519.

Some of the decisions have been declared to be similar to

the California "Earthquake Act", the Illinois "Burnt Records Act", and the "Torrens System". There is an interesting article, which we wish your Honor would read in its entirety which appeared in "The Alabama Lawyer" of October, 1942, and found in bound volume No. 3, as Volume 3, No. 4, at page 418, by Richard D. Gillam of the Birmingham Bar, entitled "Proceedings in Rem to Establish Title to Land".

In the case of Bertrand vs. Taylor, 87 Ill. 235, Taylor brought a proceedings under the Act to quiet title and obtained a decree. Bertrand filed a petition in the case after the time allowed by the Act for interventions and claimed to be the true owner, alleging that she was a non-resident and had had no notice of the proceedings until just before her petition was filed. It was held that she was too late and was bound by the decree. The Court said:

"The position taken, that the Burnt Records act is unconstitutional, is not sustained. It is, in effect a statute of limitation, and, under the circumstances, was not unreasonable. It was demanded as a matter of safety in a great emergency. It was not calculated to take any reasonable being by surprise. It was known throughout the civilized world that a large part of the City of Chicago had been destroyed by fire, and that the records of the courts and the records of deeds were all destroyed. This naturally commanded the attention of reasonable persons everywhere, and called upon them to attend and see what means would be adopted to mitigate the evils and dangers incident to the destruction. This legislation was not done in a corner, but before the observation of the civilized world. We can not doubt the power of the General Assembly to pass the act."

"The California Earthquake Act had a similar purpose. It provided, in case records were destroyed by fire, flood or earthquake, that any person claiming an estate for life or of inheritance in, and who is in peaceable possession of lands, may bring an action in rem against all the world. In the proceedings the defendants are described as "all persons claiming any interest in, or lien upon the real property herein described or any part thereof." This act was upheld by the California Court, a leading case being Title & Document Restoration Co. v. Kerrigan (1906), 150 Cal. 289, 8 L.R.A. (N.S.) 682, 119 Am. St. Rep. 199, 88

Pac. 356. In that case it was argued that a proceeding to quiet title is in personam regardless of what the legislature might call it. On this point the Court said:

"While it is true, as a general proposition, that an action to quiet title is an action in equity, which acts upon the person, it is also true that the state has power to regulate the tenure of immovable property within its limits, the conditions of its ownership and the modes of establishing the same, whether the owner be citizen or stranger. While a decree quieting title is not in rem, strictly speaking, it fixes and settles the title to real estate, and to that extent certainly partakes of the nature of a judgment in rem."

This same act was upheld as not violating the Federal Constitution in a well considered opinion by the Supreme Court of the United States (*American Land Co. v. Zeiss* (1911) 219 U.S. 47, 55 L. ed. 82, 31 Sup. Ct. 200), in which the Court said:

"To argue that the provisions of the statute are repugnant to the due process clause because a case may be conceived where rights in and to property would be adversely affected without notice being actually conveyed by the proceedings is in effect to deny the power of the state to deal with the subject. The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals."

In an earlier case, (*Arndt v. Griggs* (1890) 134 U. S. 316, 33 L. ed. 918, 10 Sup. Ct. 557), the same Court, in considering a Nebraska statute similar to that of California, made the following statement as to the power of the State to settle titles to real estate within its borders:

"What jurisdiction has a State over titles to real estate within its limits, and what jurisdiction may it give by statute to its courts, to determine the validity and extent of the claims of non-residents to such real estate? If a State has not power to bring a nonresident into its courts for any purposes by publication, it is impotent to perfect the title of real estate within its limits held by its own citizens; and a cloud cast upon such title by a claim of a nonresident will remain for all time a cloud, unless such nonresident shall voluntarily come into its courts for the purpose of having it adjudicated. But no such imperfections attend the sovereignty of the State. It has control over

property within its limits; and the condition of ownership of real estate therein, whether the owner is stranger or citizen, is subject to its rules concerning the holding, the transfer, liability to obligations, private or public, and the mode of establishing titles thereto. It cannot bring the person of a nonresident within its limits - its process goes not out beyond its borders - but it may determine the extent of his title to real estate within its limits; and for the purpose of such determination may provide any reasonable methods of imparting notice. The well being of every community requires that the title to real estate therein be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature; it is not a matter of national concern or vested in the general government; it remains with the State, and as this duty is one of the State, the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless in conflict with some special inhibitions of the Constitution or against natural justice."

In the case of Tyler vs. Judges of the Court of Registration, the Massachusetts Supreme Court had under consideration the Torrens Law and was considering its provisions as to whether it provided for due process. In the opinion, Mr. Justice Holmes, then Chief Justice of Massachusetts, said in part:

"Looking at it either from the point of view of history or the necessary requirements of justice, a proceedings in rem, dealing with a tangible res may be instituted and carried to judgment without personal service upon claimants within the State, or notice by name to those outside of it, and not encounter provisions of either constitution. Jurisdiction is secured by the power of the Court over the res."
55 N.E. 812.

It is fundamental that a judgment or decree procured through fraud can be set aside on timely motion of the aggrieved party. We respectfully insist that if the defendants in the instant case

having purchased the property in litigation from a person claiming to have been in possession thereof at the time the decree in question was entered, desire to attack the decree referred to, that they should have instituted a direct attack on said decree, alleging fraud in the procurement thereof. Had such a motion been filed, this Court would have been given the opportunity to correct any error which may have been made in the entry of said decree. Since the defendants have been permitted to challenge the decree collaterally in this proceedings, we have this remarkable situation, namely:

(a) The Circuit Court of Baldwin County, Alabama has decreed that the Old Spanish Fort Development Company was, on the date of said decree, the absolute owner of the property involved, and,

(b) The Circuit Court of Baldwin County, Alabama has entered a judgment, or if this motion is not granted, will enter a judgment, to the effect that the aforesaid decree does not speak the truth and that the respondents, through the heirs of Francisco, claim and own the title to the 4 acre tract in question.

Two decrees or judgments from the same Court, in absolute discord, are not easy to explain.

We respectfully insist that a solemn judgment and decree of a Court, rendered under the facts here appearing, cannot be attacked collaterally and such an attack has been permitted, and under the ruling of the Court, successfully maintained, in the instant case.

In the Case of Louisville & Nashville Railroad Company

vs. Tally, 203 Ala. 370, it was held that "when a domestic judgment of a court of superior and general jurisdiction, acting within the ordinary scope of that jurisdiction, is assailed collaterally, every presumption is made in favor, not only of the proceedings, but of the court's jurisdiction, both as regards the subject matter and of the parties, unless the contrary affirmatively appears on the face of the record itself." The decision quotes with approval the following statement: "According to the common law rule, adhered to at the present time in most of the states, the presumption in favor of the jurisdiction of a court of general jurisdiction is conclusive and its judgment cannot be collaterally attacked where no want of jurisdiction is apparent of record. Whenever the record of such a court is merely silent upon any particular matter, it will be presumed, notwithstanding such silence, that whatever ought to have been done was not only done but that it was rightly done. So where the judgment contains recitals as to the jurisdictional facts, these are deemed to import absolute verity unless contradicted by other portions of the record. Consequently, such a judgment cannot be collaterally attacked in courts of the same State by showing facts aliunde the record, although such facts might be sufficient to impeach the judgment in a direct proceeding against it. The validity of a judgment when collaterally attacked must be tried by an inspection of the judgment roll alone, and no other or further evidence on the subject is admissible, not even evidence that no notice had been given."

It is clear that from the decree which we are discussing, the same Court over which your Honor now presides, passed upon the

question of the possession of the property in question and heard the evidence as to such possession and decreed that the predecessors of the respondents in title held no title to, or possession of, said premises. Therefore, according to every rule of law, as we have been able to find it, the decree, so finding and so establishing the facts, must remain in full force and effect until set aside in a direct proceedings brought for that purpose.

To the same effect is a note which appears in 68 ALR, page 390, which cites, with other authorities, *Roman vs. Morgan*, 162 Ala. 135.

It is generally held that a judgment rendered in a prior action to determine the title to real property precludes a party thereto from maintaining a subsequent action to recover on a claim which he neglected to interpose in the former action. See annotation in 8 ALR 694-731.

One who is made a party to a suit in the nature of a proceedings in rem, involving the title to real estate, and is called upon to answer as to his supposed or possible, but unknown and undefined, interest in the property, and who defaults, has been said to admit that he has no interest therein, and to be precluded thereafter from setting up any claim thereunder. *Barton vs. Anderson*, 4 N E 420. *Provident Loan & Trust Co. vs. Marks*, 52 Pac. 449, 68 Am. St. Rep. 349. These principles have been applied to default judgments in suits to quiet title. Thus, a judgment by default in a suit to quiet title to real property was held to be conclusive with respect to the plaintiff's title to the land involved therein, in a subsequent action by the defaulting defendant against the plaintiff to quiet the former's title to the same land.

Hooper vs. Wist, 211 S W 143. Butler vs. Maas, 94 Pac. 2nd, 1116. 128 ALR, page 513.

We do respectfully insist that by fully complying with all of the statutory provisions laid down by the Grove Act, the plaintiff, in the title quieting proceedings, out of which the decree under consideration emerged, did everything in its power and everything that was required to effectively invoke the jurisdiction of the Court to quiet its title to the land in question.

If the heir from Francisco, who sold the property to the defendants, had claimed the property in good faith, it was his duty, or the duty of those under whom he claimed, to assess the property for taxation. Had he assessed it for taxation, this would have been such notice to the complainant in said suit as would have required the complainant to recognize him as a claimant of said property by allegations to that effect in the bill of complaint. Since, however, he refused and neglected to assess the property for taxation, he did not qualify for notice under the Grove Act, and as to him, or others so circumstanced, the published notice and the Lis Pendens was amply sufficient to make him, to all intents and purposes, a party to the proceedings.

The nearest case in point that we have been able to find is the case of Brooks-Scanlon Company, et al vs. Stogner (Miss. 75 Sou. 596). In that case, it was shown that in a proceedings to quiet title, the plaintiff had fraudulently alleged that no one other than complainant was in possession. A decree was entered by default - not on proof of title as was done in the instant case, but the Court held that the only way to get rid of the decree was a direct proceedings, attacking it, and on such direct proceedings,

the Court held that the original proceedings was based on fraud and granted the defendant the relief prayed for. That is precisely what the defendants, or their predecessors in title, should have done in this case, if they, in good faith, believed that a fraud had been perpetrated. In such an issue, that is, a proceedings directly attacking the decree, the matter would have been for the determination of your Honor and not the findings of a jury. I doubt not that if this case had been before your Honor on the question of possession, that your Honor would have dismissed as unworthy of belief or legal effect the testimony to the effect that defendants' predecessor in title had for years worked a garden on the property. Such testimony, though having some appeal to a jury, would not convince your Honor of the bona fides of a claim of possession.

In view of the decisions above cited, any evidence of possession on the part of those under whom the defendants claim, at the time of the filing of the bill upon which the decree quieting title is based, was irrelevant and immaterial as constituting a collateral attack on the finality of the decree. Hence, the charges, made the basis of grounds 4 and 5 in the motion, were abstract and misleading. This, because the decree fixed both the title and possession of the property in the plaintiffs and those under whom they claim.

The charge made the basis of the 6th ground in the motion is wholly at variance with the decisions above cited. This charge permits a collateral attack upon the decree in question and in effect, destroys the decree as evidence.

To the same effect is the charge given by the Court for the defendants and which is made the subject of ground number 8 in the motion.

Through the refusal of charges which form a basis of grounds 10 and 11 in the motion, and in that part of the Court's oral charge, made the basis of the objection number 13 in the motion, the Court denied to the plaintiffs the benefits to which they were entitled under the decree, and the refusal of these charges, and the statement in the Court's oral charge, made the basis of objection number 13, we respectfully submit, constitutes error sufficient to reverse this case if an appeal is taken, and therefore, constitutes grounds upon which a new trial should be granted.

Respectfully submitted,

J. B. Blackburn
Attorneys: Corney, Turner, Rogers, Johnston
and Adams

I hereby certify that I delivered a copy of the foregoing brief to H. M. Hall, Esquire, Attorney for the Defendants, on this the 27th day of September, 1948.

J. B. Blackburn

[Faint handwritten notes or signatures in the bottom left corner]

THE MERCHANTS NATIONAL BANK OF MOBILE,
A National Banking Association, as
Trustee, GEORGE E. FULLER and PATRICE
B. FULLER,

Plaintiffs

VS

JAMES MORRIS AND LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 974

DEMAND FOR ABSTRACT

TO H. M. HALL, ATTORNEY FOR JAMES MORRIS AND LEON MORRIS, DEFENDANTS

Demand is hereby made, as provided by Title 7, Section 940
of the 1940 Code of Alabama, that you produce an abstract in writ-
ing of the title or titles on which the Defendants will rely for
defense of this suit.

If the said abstract of title so demanded is not produced
before trial of the said cause, the Plaintiffs will move for the
relief provided in and by Title 7, Section 940 of the 1940 Code of
Alabama.

M. C. Corvey, Turner, & Rogers

J. B. Blackburn
Attorneys for Plaintiffs

A copy of this instrument was
delivered to me on the 20th
day of October, 1946.

H. M. Hall
Attorney for James Morris and Leon
Morris, Defendants. //

MERCHANTS NATIONAL BANK et al

PLAINTIFF

VS

J. D. MORRIS and D. L. MORRIS

DEFENDANTS

IN THE CIRCUIT COURT OF

BALWIN COUNTY, ALABAMA.

TO THE HONORABLE ARCHIE KELLOFF, CIRCUIT JUDGE, ACTING SPECIALLY IN THE 28th
JUDICIAL CIRCUIT:

Come the Defendants in the above styled cause and move your Honor and
this Honorable Court for a 30 day extension of time in said cause in which
to file the transcript of record, and as a basis for such motion show unto
Your Honor and this Honorable Court:

Since the Transcript of testimony in the above styled cause has just been
completed by Mrs. Louise Dusenberry, Court Reporter, who has been overworked
in our Civil and Criminal Circuit Courts, Jury Terms; and we have not had time
to complete our study of this portion of the record; and our Circuit Clerk,
Honorable Alice J. Duck, has not had the opportunity to finally complete the
transcript for filing, request is made that your Honor will please extend the
time for filing the transcript of record for thirty additional days from October
15, 1957. This request is made in accordance with the provisions of Supreme
Court Rule 37 as amended and revised and copy of adopted and substituted revised
rule 47.

THOMPSON & WALLER
Thompson & Waller
THOMPSON & WALLER

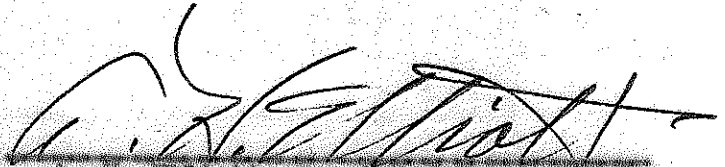
W. D. Thompson

ORDER

It being made to appear to the Circuit Court of Baldwin County, Alabama that it is impossible for the Clerk of said Court to prepare and return to the Supreme Court the transcript of record in the cause of Merchants National Bank et al vs Morris et al, due to the voluminous nature of the pleadings involved consistently with his other duties within the time required by Rule 37 of the Revised Rules of the Supreme Court of Alabama by a motion presented this day.

Upon consideration thereof it is Ordered, Adjudged and Decreed by the Court that the Appellants be granted and they are hereby granted and they are hereby granted an extension of 30 days for the filing of said transcript of record in the Supreme Court of Alabama.

Done this 6th day of Nov, 1957.



A. H. Elliott, Special Judge of the
Circuit Court, Baldwin County,
Alabama.

MERCHANTS NATIONAL BANK et al

PLAINTIFF

VS

J. D. MORRIS and D. L. MORRIS

DEFENDANTS

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

TO THE HONORABLE ARCHIE ELLIOTT, CIRCUIT JUDGE, ACTING SPECIALLY IN THE 28th
JUDICIAL CIRCUIT:

Come the Defendants in the above styled cause and move your Honor and
this Honorable Court for a 30 day extension of time in said cause in which
to file the transcript of record, and as a basis for such motion show unto
Your Honor and this Honorable Court:

Since the Transcript of testimony in the above styled cause has just been
completed by Mrs. Louise Dusenberry, Court Reporter, who has been overworked
in our Civil and Criminal Circuit Courts, Jury Terms; and we have not had time
to complete our study of this portion of the record; and our Circuit Clerk,
Honorable Alice J. Duck, has not had the opportunity to finally complete the
transcript for filing, request is made that your Honor will please extend the
time for filing the transcript of record for thirty additional days from October
15, 1957. This request is made in accordance with the provisions of Supreme
Court Rule 37 as amended and revised and copy of adopted and substituted revised
rule 47.

BEEBE & SWEARINGEN

THOMPSON & WHITE


BY:

ORDER

It being made to appear to the Circuit Court of Baldwin County, Alabama that it is impossible for the Clerk of said Court to prepare and return to the Supreme Court the transcript of record in the cause of Merchants National Bank et al vs Morris et al, due to the voluminous nature of the pleadings involved consistently with his other duties within the time required by Rule 37 of the Revised Rules of the Supreme Court of Alabama by a motion presented this day.

Upon consideration thereof it is Ordered, Adjudged and Decreed by the Court that the Appellants be granted and they are hereby granted and they are hereby granted an extension of 30 days for the filing of said transcript of record in the Supreme Court of Alabama.

Done this 6th day of Nov, 1957.


A. H. Elliott, Special Judge of the
Circuit Court, Baldwin County,
Alabama.

THE MERCHANTS NATIONAL BANK OF MOBILE,
A National Banking Association, as
Trustee, GEORGE E. FULLER and PATRICE
B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NO. 974.

SECURITY FOR COSTS

I hereby acknowledge myself as Security for Costs of
the Appeal taken by the Plaintiffs in this Cause to the Supreme
Court of the State of Alabama from the final judgment rendered in
this Cause on the 17th day of April, 1947, in which Cause the
Plaintiffs' motion for a new trial was overruled on January 15, 1949..

Dated this 2nd day of March, 1949.

J. B. Blackburn

Taken and approved on this the
2nd day of March, 1949.

David J. Duck
Clerk of the Circuit Court.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 57-58

To the CLERK of the CIRCUIT Court, BALDWIN County—Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court of said county, in a certain cause lately pending in said Court between

JAMES MORRIS: LEON MORRIS, AppellantS,

and

THE MERCHANTS NATIONAL BANK, AS TRUSTEE, Appellee,

wherein by said Court it was considered adversely to said appellant S, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant S:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 22nd day of MAY, 19 58, that said

JUDGMENT of said CIRCUIT Court be in all things

affirmed, and that it was further considered, ordered, and adjudged that the appellant S, ~~and~~

JAMES MORRIS and LEON MORRIS,

and

C. LENOIR THOMPSON, SURETY

ON THE APPEAL BOND,

pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 22nd day of

MAY, 19 58. J. Render Thomas

Clerk of the Supreme Court of Alabama.

STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

TO THE HONORABLE A. H. ELLIOTT, CIRCUIT JUDGE, BREWTON,
ALABAMA.

It appearing that the Honorable Hubert M. Hall, Judge
of the 28th Judicial Circuit of Alabama, has recused himself
in the following styled cases:

The Merchants National Bank of Mobile, a National
Banking Association, as Trustee, George E. Fuller
and Patrice B. Fuller,
v. James Morris and Leon Morris,
in the Circuit Court of Baldwin County, Alabama,
at Law, No. 974;

The Merchants National Bank of Mobile, a National
Banking Association, as Trustee, George E. Fuller
and Patrice B. Fuller,
v. James Morris and Leon Morris,
in the Circuit Court of Baldwin County, Alabama,
in Equity, No. 1566;

and it appearing that it is necessary for another judge to be
assigned for the trial of said cases, and the public good re-
quiring it;


It is ordered that the above-styled cases be, and the
same are, hereby assigned to you, and you are ordered to pre-
side at the trial of said cases, with full authority of the
regular judge of said circuit, and it is further ordered that
your authority in the trial of the cases herein set out is
continuous until final disposition thereof.

It is further directed that this order be spread upon
the minutes of the court.

Done at Chambers, this 27th day of July, 1955.

RECORDED

minutes 11, page 400


J. ED LIVINGSTON
Chief Justice

THE SUPREME COURT OF ALABAMA

October Term, 19 57-58

1st Div., No. 754

JAMES MORRIS:

LEON MORRIS,

Appellant, s

vs.

THE MERCHANTS NATIONAL BANK,

AS TRUSTEE,

Appellee.

From BALDWIN CIRCUIT Court.

CERTIFICATE OF AFFIRMANCE

The State of Alabama, }
County. } Filed

this 26 day of May 1958

Wesley L. Hurd
Wesley L. Hurd

SECURITY FOR COSTS

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Asso-
ciation, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,
Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 974.

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Miss. Duch
Carr*

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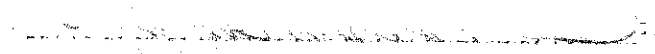
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THE SUPREME COURT OF ALABAMA

October Term, 19 57-58

1st Div, No. 754

JAMES MORRIS:

LEON MORRIS,

Appellant, s

vs.

THE MERCHANTS NATIONAL BANK,

AS TRUSTEE,

Appellee.

From BALDWIN CIRCUIT Court.

CERTIFICATE OF AFFIRMANCE

The State of Alabama,

County. } Filed

this 26 day of May 1958

Wesley L. Murrell

clerk

SECURITY FOR COSTS

THE MERCHANTS NATIONAL BANK OF
MOBILE, a National Banking Asso-
ciation, as Trustee, GEORGE E.
FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

JAMES MORRIS and LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 974.

*Filed 3-3-49
Wiley W. Wicks
Clerk*

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*Filed 11-9-57
Designation
Clerk*

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7-11-57
Henry J. Clark

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ALICE J. DUCK

Register And Clerk Of The
Circuit Court

BALDWIN COUNTY

BAY MINETTE, ALA.

December 4, 1957

FILED

DEC 5 1957

SUPREME COURT OF ALABAMA

J. RENDER THOMAS
Clerk

Hon. J. Render Thomas
Montgomery, Alabama

1 DIV. 754

Dear Mr. Thomas,

Re: The Merchants National Bank, as Trustee,
vs Appellee
James Morris & Leon Morris - Appellants

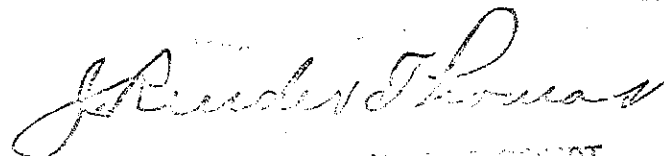
The Transcript in the above styled cause is this day being
mailed to you.

Respectfully Yours


Clerk, Circuit Court

AJD/eb
cc:
Hon. J.B. Blackburn
Hon. C.Lenoir Thompson
Hon. W.C. Beebe

DEC 5 - 1957 TRANSCRIPT FILED


Clerk, Circuit Court

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

December 28, 1948

Judge F. W. Hare
Monroeville, Alabama.

Dear Judge Hare:

Sometime prior to your eye operation, the Equity case of Merchants National Bank of Mobile, as Trustee, et als, vs. James Morris and Leon Morris, was submitted on the Respondent's motion to dissolve the temporary injunction which was granted in this case.

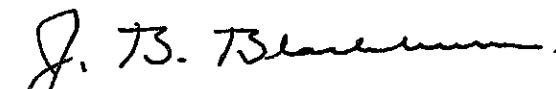
At the same time, the Plaintiff's motion for a new trial in the case of Merchants National Bank of Mobile, as Trustee, et als, vs. James Morris and Leon Morris, was submitted and taken under advisement by you. At that time, you requested that briefs be furnished.

Sometime ago, the Complainants in the Equity suit and the Plaintiffs in the Ejectment suit filed an original and supplemental brief but the Respondents in the Equity suit and the Defendants in the Ejectment suit have not filed their brief up to this time. When the briefs were filed, they were left with the Clerk and have not been sent to you.

As these matters were submitted to and taken under advisement by you, Judge Turner and I are of the opinion that they should be ruled on by you.

I am requesting Mrs. Duck to mail you the above briefs and am sending Hubert a copy of this letter so that he can get you his brief.

Sincerely yours,


J. B. BLACKBURN.

JBB:brb

1. The Court charges the jury that if you believe the evidence in this case, your verdict should be for the Plaintiffs.

*Refused to sign
Judge*

4. The Court charges the jury that the Final Decree in the case of The Old Spanish Fort Development Company, a Corporation versus Section 38, Township 4 South, Ranges 1 and 2 East in Baldwin County, Alabama with other lands, and against all persons claiming any right or title to the said lands, a certified copy of which is in evidence in this case, became final against all persons other than minors, lunatics and those whose right of possession is postponed until the happening of some future event, at the expiration of six months from the date thereof and if you are reasonably satisfied from the evidence in this case that the Plaintiffs in this case derive title to the lands involved in this present proceeding from or through The Old Spanish Fort Development Company, a Corporation, your verdict should be for the Plaintiffs.

*Refused to sign
Judge*

"The Court charges the jury that if they believe from the evidence in this case that the defendants and those under whom they hold title have been in the open, notorious, continuous, adverse possession of the land involved under a claim of ownership for more than ten years next before the beginning of this suit, the defendants would be entitled to recover."

*#9
Refused to sign
Judge*

*Referred
F.W. Stare
Judge*

14. The court charges the jury that if you are reasonably satisfied from the evidence in this case that Patrick J. Byrne went into possession of the land involved in this suit when he received the tax deed from the State Land Commissioner of Alabama dated November 13, 1936 which has been introduced in evidence in this case and remained in possession of the said property until he conveyed it to H. M. Sopher by deed dated February 15, 1937 and that H. M. Sopher remained in possession of the said property until after November 15, 1939 your verdict should be for the Plaintiffs.

10. The Court charges the jury that title to the lands involved in this proceeding has already been adjudicated and established in the Old Spanish Fort Development Company, a Corporation by a decree of the Circuit Court of Baldwin County, Alabama, Equity Side, by the decree dated October 10, 1927, a certified copy of which is in evidence in this case and if you are reasonably satisfied from the evidence in this case that the Plaintiffs derive title to said lands from or through the Old Spanish Fort Development Company, a Corporation, they are entitled to a judgment for possession of the four acre tract involved in this proceeding.

*Referred
F.W. Stare
Judge*

CERTIFICATE OF APPEAL

I, ALICE J. DUCK, Clerk of Circuit Court, Baldwin County, Alabama, do hereby certify that in the cause of MERCHANTS NATIONAL BANK as Trustee et als. as Plaintiff vs. JAMES MORRIS and LEON MORRIS, as Defendants, which was tried and determined in this Court, on the 18th day of April, 1947, in which there was a judgment for Defendants, The Plaintiff on the 3rd day of March, 1949 took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that J. B. BLACKBURN filed security for cost of appeal to the Supreme Court, on the 3rd day of March, 1949 and that J. B. BLACKBURN is surities on the appeal bond.

I further certify that notice of said appeal was, on the 4th day of March, 1949 served on H. M. HALL as attorney of record for said Defendants.

Witness my hand and seal of this Court, this the 4th day of March, 1949.

Clerk of the Circuit Court of
Baldwin County, Alabama

THE MERCHANTS NATIONAL BANK OF
MOBILE, ALABAMA, a National
Banking Association, as Trustee,
et als,

Complainants,

VS.

LEON MORRIS AND JAMES MORRIS,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 1566.

THE MERCHANTS NATIONAL BANK OF
MOBILE, ALABAMA, a National
Banking Association, as Trustee,
GEORGE E. FULLER AND PATRICE B.
FULLER,

Plaintiffs,

VS.

JAMES MORRIS AND LEON MORRIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NUMBER 974.

SUPPLEMENTAL BRIEF BY McCORVEY, TURNER,
ROGERS, JOHNSTONE & ADAMS AND J. B. BLACK-
BURN, SOLICITORS FOR THE COMPLAINANTS IN
THE ABOVE STYLED EQUITY CASE AND ATTORNEYS
FOR THE PLAINTIFFS IN THE ABOVE STYLED CASE
NOW PENDING ON THE LAW SIDE OF THE CIRCUIT
COURT OF BALDWIN COUNTY, ALABAMA.

The above styled Equity case has been submitted
on Respondents' motion to dissolve the temporary injunction and
the above styled Law case has been submitted on Plaintiffs' motion
for a new trial.

It was understood and agreed that the two matters
would be submitted on brief. The Plaintiffs filed their original

brief in this cause on September 27, 1948 and furnished a copy thereof to H. M. Hall, Esq., Solicitor for the Respondents in the Equity case and Attorney for the Defendants in the Law case. His reply brief has not been filed.

There is a line of authorities which were not included in the original brief, which will have a material bearing on the questions raised in the two cases and, therefore, this supplemental brief is filed in order that the Court will have the benefit of these additional authorities.

In the case of Alabama Electric Cooperative, Inc., et al vs. Alabama Power Company, which was decided by the Supreme Court of Alabama on July 31, 1948, which is reported in 36 So. 2nd. 523, one of the questions raised was that an order in the case was not intended as a final one. In that case the Court held:

"6,7 Short of the main point, and less stressed, is the argument that the trial court erred in refusing to permit proof that Shafer's order was not intended as a final one, but was merely an expression of his views in the case. The court correctly inhibited this proof. Judicial records import absolute verity and are not subject to contradiction in collateral proceedings by extraneous evidence. *Laird v. Columbia Loan & Investment Co.*, 216 Ala. 619, 114 So. 208; *Fayerweather v. Ritch*, 195 U.S. 276, 306, 307, 25 S.Ct. 58, 49 L.Ed. 193.

The same general rule pertains to a judgment rendered by an administrative tribunal invested with judicial power. The order entered and enrolled by Shaffer was his solemn judgment after hearing the evidence, and was not subject to be so impeached. *Chicago, B. & Q. Ry. Co. v. Babcock*, 204 U.S. 585, 593, 27 S.Ct. 326, 51 L.Ed. 636; *United States v. Morgan*, 313 U.S. 409, 421(3), 422, 61 S.Ct. 999, 85 L.Ed. 1429. See also 5 Wigmore, Evidence, 2d Ed., 106-108, Pars. 2348 and 2349.

The rulings of the circuit court were free of error."

In the case of Laird vs. Columbia Loan and Investment Company, 216 Ala. 619, 114 So. 208, the Respondent attempted to contradict or impeach a record of a certain report of sale to one Gwin, the contention being that Gwin purchased only one forty-acre tract instead of three, as shown by the record. And in that case the Court held:

"Judicial records import absolute verity. They cannot be contradicted in collateral proceedings by other evidence. L. & N. R. Co. v. Perkins, 152 Ala. 133, 44 So. 602; Ex parte Rice, 102 Ala. 671, 15 So. 450; Thomason v. Odum, 31 Ala. 108, 68 Am. Dec. 159; 22 C.J. p. 968, Par. 1206; 23 R.C.L. p. 158, Par. 7."

In the case of Louisville and Nashville Railroad Company vs. Perkins, 152 Ala. 133, 44 So. 602, an attempt was made by plea to collaterally assail an order appointing an Administrator. The Court held:

"This cannot, under these circumstances be done.-- Breeding v. Breeding, 128 Ala. 412, 30 South. 881; Bromberg v. Sands, 127 Ala. 416, 30 South. 510; Winter v. London, 99 Ala. 263, 12 South. 438.

But it is insisted that the effort is, not to question the validity of the appointment, but to ascertain the true date thereof. A perfect answer to this contention is that, from the face of the record, it appears that the appointment was made at the special February term. It is no more permissible to collaterally impeach orders or judgments in respect of the assured time of their rendition, as shown by them, than any other part of them. Any other rule would render records of courts extremely uncertain and unreliable. The rendition of a judgment or order is the judicial act involved in the court's pronouncement in the premises; whereas, the entry of the order or judgment is but the performance of the ministerial act consequent upon such rendition."

In the case of Glass vs. State, 26 Ala. App. 570,

163 So. 819, an effort was made to impeach the judgment of a Juvenile Court, which was regular on its face, by parole evidence and in that case the Court held:

"2,3 It is insisted that this last and foregoing order, the basis of these proceedings, is null and void, in that the juvenile court of Colbert county had lost control and all jurisdiction of the delinquent child. This insistence is without merit, and cannot be sustained. This, for the reasons hereinabove stated. Moreover, the order and judgment of the juvenile court aforesaid being regular and legal on its face, its verity could not be impeached by parole evidence as insisted by the appellant, and the court's rulings in this connection were without error."

In the case of King vs. Jemison, 33 Ala. 499, a motion was made to have an award of arbitrators entered as a judgment of the Circuit Court and one of the parties attempted to show by one of the arbitrators certain facts which contradicted the facts recited in the award. The Court held that the evidence was inadmissible. The opinion, written by Judge Stone, reads, in part, as follows:

"If facts found by arbitrators could be retried and overturned in this way, arbitrations, instead of being a mode of settling disputes, would become the initiatory step to litigation. This, too, in direct opposition to the statute, which declares they are final, unless attacked for fraud, partiality or corruption.--Code, Par. 2721. There was no error in disregarding that testimony.--Young v. Leaird, 30 Ala. 371."

Some other Alabama cases on the same point are as follows:

King vs. Martin
67 Ala. 177

Baxley et al vs. Jackson
216 Ala. 411, 113 So. 500

Ex Parte, Lineville National Bank
217 Ala. 381, 116 So. 419

As stated in the original brief, which was filed in this cause, the Circuit Court of Baldwin County, Alabama, Equity Side, decreed that the Old Spanish Fort Development Company was, on the date of the decree, the absolute owner of the property described in the decree and which is involved in this proceeding.

Because of the ruling which is so clearly stated in the above authorities and in those cited in the original brief, the Court committed error in permitting the Defendants in the above styled ejectment suit to prove by parole testimony that those through whom they claim title to the three-acre tract, which is involved in the ejectment suit, were in possession of the property at the time the decree was rendered, which quieted title of the Old Spanish Fort Development Company to the said tract of land. The effect of the Court's ruling was clearly to vary the terms of a solemn decree of the Court by parole testimony, as the decree recited that the Complainant in the suit quieting title was in possession of all of the property at that time.

We respectfully submit that the Court should deny the Respondent's motion to dissolve the temporary injunction in the Equity case and grant Plaintiffs' motion for a new trial in

the ejectment suit.

Respectfully submitted,

Mrs. Corney, Turner Rogers, Johnstone & Adams.
J. T. Blackburn

I hereby certify that I mailed a copy of the foregoing brief to H. M. Hall, Esquire, Solicitor for the Respondents in the above styled Equity case and Attorney for the Defendants in the above described ejectment suit, postage prepaid, on this the 14th day of October, 1948.

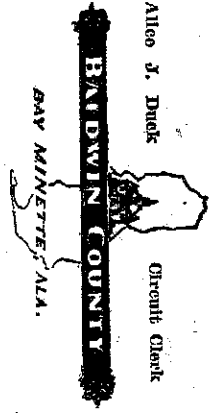
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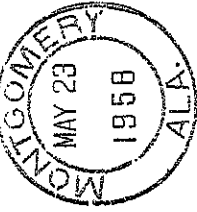
Order changed

Wm



Alice J. Duck

Circuit Clerk



CB
Merchants Nat Bank

15
Worris

J. Duck
Baldwin Circuit Court
Montgomery, Alabama