

3186

BERTHA MAE HUGHEN and)
L. O. HUGHEN,)
Complainants,) IN THE CIRCUIT COURT OF
Vs.) BALDWIN COUNTY, ALABAMA
JASPER JAMES LOWERY,) IN EQUITY
Respondent.)

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, Sitting in Equity.

Now come your complainants, Bertha Mae Hughen and L. O. Hughen, in the above styled cause and respectfully represent unto your Honor as follows:

1. Your complainants, Bertha Mae Hughen and L. O. Hughen, are over the age of twenty-one years and residents of Baldwin County, Alabama; the respondent, Jasper James Lowery, is over the age of twenty-one years and a resident of Baldwin County, Alabama.

2. The complainant, Bertha Mae Hughen, is the mother and the complainant, L. O. Hughen, the stepfather of the respondent, Jasper James Lowery, whose father died while he was still an infant. At the time of his death the then husband of the said Bertha Mae Hughen was the owner of certain real estate in Baldwin County, Alabama, described as the Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$), and the Northwest Quarter ($NW\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$), of Section thirty-two (32), Township five (5) South, Range four (4) East.

3. That the complainant, Bertha Mae Hughen, has occupied the dwelling located on the Northwest Quarter ($NW\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section thirty-two (32), Township five (5) South, Range four (4) East for more than forty (40) years, this having been her home and her homestead, and the complainant, L. O. Hughen, has occupied said premises since his marriage to Bertha Mae Hughen over fifteen (15) years ago and has made numerous improvements to said property and has maintained the premises.

4. That in January of 1946 there was due on the real estate herein described state and county taxes in the amount of approximately One Hundred Dollars (\$100.00) inasmuch as the real estate had been sold for unpaid taxes and had not been redeemed. The respondent, Jasper James Lowery, represented to the complainants that he was financially able to pay the back taxes on said property and redeem the same from the tax sale. He later approached the complainants and informed them that it would be necessary that the complainants and his brother and sisters execute a deed to him before he could redeem said property and that he had had a deed prepared for this purpose. The complainants, not being well versed in business matters and depending and relying upon the integrity and honesty of the respondent, and having no reason to doubt the truth of his statements, executed on the 31st day of January, 1946, a warranty deed conveying the real estate herein described to the respondent.

5. The respondent at that time, or subsequent thereto, represented to the complainants that he wished to build a house on the East ten acres of this real estate, being the Northeast Quarter (NE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$), and he was authorized by them to do so. Instead of constructing a dwelling on said property he sold it to a third person at a consideration believed by the complainants to have been considerably in excess of One Thousand Dollars (\$1,000.00).

6. No consideration was paid by the respondent to the complainants for the conveyance of the real estate herein described other than the payment of approximately One Hundred Dollars (\$100.00) for taxes, although the respondent, who had been born and had grown to manhood on said property and was an intelligent and well educated person, well knew the value of said property.

7. Complainants still never doubted the honesty and integrity of the respondent who were approached by him several years ago with the request that they sign a statement that the property was his and the complainants believing, as was expressed to them

by the respondent, that he needed this statement in connection with some claim against the Veterans Department as an ex-serviceman, signed it.

8. The respondent then on the 9th day of July, 1953, had issued in the Justice Court of J. J. Gainus of Robertsdale a summons and complaint claiming therein that they were unlawfully withholding the property from him and claiming Fifty Dollars (\$50) for the detention thereof. Until this time there had been no question in the minds of the complainants that the property was theirs and that the conveyance signed by them was solely for the purpose of allowing the respondent to redeem the land from the tax sale.

THE PREMISES CONSIDERED, complainants pray that the respondent be made a party defendant to this cause by the usual process of this Honorable Court, and that upon a final hearing thereof that he be required to furnish proof of the amount received for the conveyance of the real estate heretofore sold; that he be required to furnish proof of the total amount of his expenditures for taxes and other legal charges paid by him, and that your Honor may cause an account to be stated and that the respondent be required to pay over to the complainants the amount received by him in the sale of the property, after deduction of the amount paid for taxes and other legal charges, and that he be required to convey to the complainant, Bertha Mae Huguen, the real estate occupied by her, and that upon his failure to so convey within thirty (30) days, that the Registrar be required to make such conveyance for him and in his name, and that they be granted such other, further or general relief as in equity may seem right and proper, as in duty bound they will ever pray.


Attorney for Complainants

The State of Alabama, Baldwin County

IN CIRCUIT COURT, IN EQUITY

To any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon Jasper James Lowery

to appear and answer, plead, or demur, within thirty days from the service hereof, to a Bill of Complaint filed in said Circuit Court, in equity, for said County of said State

Bertha Mae Huguen and L. O. Huguen

against Jasper James Lowery

Herein fail not. Due return make of this writ as the law directs.

Witness this 22nd day of January, 1954

W. J. French, Register.

(Defendant is entitled to a copy of the bill on application to the Register.)

No. 3186 Page.....

The State of Alabama

Baldwin COUNTY.

IN CIRCUIT COURT, IN EQUITY

Bertha Mae Huguen and L.O. Huguen
vs.

Haspen James Lowery

SUMMONS

Returned by the Sheriff and filed in office, this

the..... day of....., 19.....

....., Register.

Received in office, this the 22 day of

Jan, 1954

Taylor Wilkins, Sheriff.

I have executed the within by leaving a copy
thereof with.....

defendant named herein, on this the 23

day of Jan, 1954

Taylor Wilkins, Sheriff.

By Edleigh Stedmon, Deputy.

BERTHA MAE HUGHEN and
L. O. HUGHEN,

COMPLAINANT AND
CROSS-RESPONDENT,

VS

JASPER JAMES LOWERY,

RESPONDENT AND
CROSS-COMPLAINANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

Comes the Respondent in the above styled cause and for answer to
complaint filed therein shows unto this Honorable Court as follows:

1.

As to Count One he admits the allegations therein.

2.

As to Count Two he admits the allegations therein.

3.

As to Count Three your respondent denies the allegations therein.

4.

As to Count Four your Respondent denies the allegations therein.

5.

As to Count Five he denies the allegations therein.

6.

And further to Count Five that the Respondent denies that there was such
an agreement.

7.

As to Count Six your Respondent denies the allegations therein.

8.

As to Count Seven your Respondent denies the allegations therein.

9.

As to Count Eight your Respondent denies the allegations therein.

And now having answer said complaint your Respondent and Cross-Complainant
prays that this Honorable Court will make the following a cross-bill and make
the said Complainants, cross-respondent hereto in said cause, requiring them
to plea, answer or demur in accordance with the rules of this Honorable Court
as said Cross-Respondents, and your Respondent and Cross-Complainant now shows
unto this Honorable Court that all of the parties to this cause are over the
ages of twenty-one years and are residents of Baldwin County, Alabama.

1.

That the said Complainant, L. O. Huguen, has no interest in this property.

2.

That the said Complainant, Bertha Mae Huguen, is the mother of your petitioner and cross-complainant, that the land, subject of this suit, was the individual property of your Petitioner's father, who has been dead for many years leaving as heirs at law your Petitioner, Jasper James Lowery, Walter E. Lowery, Clara Inez Lowery Agerton and Verda Mae Lowery Ard, and as widow, the complainant in this cause, Bertha Mae Huguen.

3.

That your Petitioner grew up on said property and on, to-wit, January, 1946, your Petitioner learned that the said property had years previously been sold to the State of Alabama for taxes and was being disposed of by the State at that time, that your Petitioner did by a quit claim deed, execute before J. W. Brett, Notary Public of Baldwin County, Alabama, purchase the undivided interest of each of said heirs in which deed said heirs were joined by their spouses in executing said deed, the consideration being the sum of Ten (\$10.00) Dollars and that said deed was recorded in the Office of the Judge of Probate of Baldwin County, Alabama, on February 1, 1946, Deed Book 103 page 29, upon which having been done your Petitioner paid over to the State of Alabama the sum of to-wit, \$550.00 being back taxes, fees, interest and costs due on said property which the Complainants in this cause had allowed to accrue and which sum said Complainants alleged to your petitioner they were unable to pay, and said deed, being in words and figures as follows:

QUIT CLAIM DEED

STATE OF ALABAMA
BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, Bertha May Huguen and L. O. Huguen, her husband, Walter E. Lowery and Marie Lowery, his wife, Clara Inez Agerton and Arthur Agerton, her husband, Verda Mae Ard and Duan Ard, her husband for and in consideration of the sum of Ten Dollars to us in hand paid by Jasper James Lowery, the receipt whereof is hereby acknowledged, we do remise, release, quit-claim and convey to the said Jasper James Lowery all of our right, title and interest and claim in or to the following described real estate situated in Baldwin County, Alabama, to-wit:

Northeast Quarter (NE $\frac{1}{4}$) of Northwest Quarter (NW $\frac{1}{4}$) of Southwest Quarter (SW $\frac{1}{4}$) and Northwest Quarter (NW $\frac{1}{4}$) of Northeast Quarter (NE $\frac{1}{4}$) of Southwest Quarter (SW $\frac{1}{4}$), Section Thirty-two (32) Township Five (5) South of Range Four (4) East, containing twenty acres more or less.

To have and to hold to the said Jasper James Lowery, his heirs and assigns forever.

GIVEN under our hands and seals this the 31st day of January, 1946.

(Signed) Bertha Mae Huguen
(Signed) L. O. Huguen
(Signed) Walter E. Lowery
(Signed) Marie A. Lowery
(Signed) Clara Inez Agerton
(Signed) Arthur Agerton
(Signed) Verda Mae Ard
(Signed) Duane Ard

STATE OF ALABAMA
BALDWIN COUNTY

I, J. W. Brett, a Notary Public, in and for said County and State, do hereby certify that, Bertha Mae Huguen, L. O. Huguen, her husband, Walter E. Lowery and Marie Lowery, his wife, Clara Inez Agerton and Arthur Agerton her husband, Verda Mae Ard and Duane Ard, her husband, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me, on this day, that being informed of the contents of the said conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 31st day of January, 1946.

(Signed) J. W. Brett

4.

That your Petitioner premitted said Complainants herein to live on said property with him as tenants at will and later when your petitioner removed from said property he allowed said Complainants and Cross-Respondents to remain thereon in the same capacity as tenants at will.

5.

That on, to-wit, November 6, 1951, in order to protect your Petitioner's rights in this real property your Petitioner obtained from the Complainants and Cross-Respondents herein the following acknowledgment in writing which said Complainants and Cross-Respondents voluntarily executed to-wit:

Robertsdale, Alabama
November 6, 1951

We, Olin Huguen and Bertha Hughs, husband and wife, admit that the place on which we live and occupy as a home belongs to Jasper James Lowery and Helen Lowery, husband and wife, and that we have no right, title or interest to, and that we are occupying the said land as the tenants of Jasper Lowery and wife.

(Signed) Bertha Huguen
(Signed) L. O. Huguen

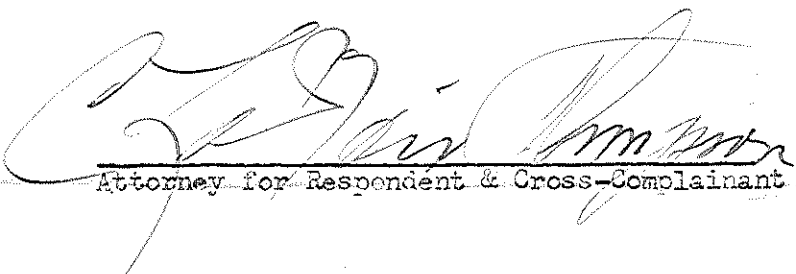
6.

Your Petitioner further represents unto this Honorable Court that he is the holder in fee simple of said real property and a heir at law of his father Edward Lowery having acquired said interest first as a heir at law of his original undivided interest and by a quit claim deed duly prepared and properly executed of the other heirs at law and of the widow of the said Edward Lowery.

7.

Your Petitioner denies that expensive improvements were made on said property by the Complainants and Cross-Respondents hereto and further shows unto this Honorable Court that the improvements alleged were begun by the Complainants and Cross-Respondents after litigation was instituted for said property.

These premises considered your Respondent and Cross-Complainant prays that this Honorable Court will on a final hearing of this cause make and enter a decree denying the Complainants and Cross-Respondents the relief sought by them and further make and enter such a decree as will provide your Respondent and Cross-Complainant with the relief prayed for in this petition and established by the deed acknowledgment in writing of the Complainants and Cross-Respondents and such other, further and different relief as unto your Honor may seem just, equitable and proper, and, as in duty bound your Complainant will ever pray, etc.


Attorney for Respondent & Cross-Complainant

3184

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

BERCHA MAE HUGHEN AND L. O.
HUGHEN,

COMPLAINANTS AND
CROSS-RESPONDENTS

VS

JASPER JAMES LOWERY,

RESPONDENT AND
CROSS-COMPLAINANT

Answer

*****) *****

C. LeNoir Thompson
Attorney At Law
Bay Minette, Alabama

FILED
1954

BERTHA MAE HUGHEN and
L. O. HUGHEN,

COMPLAINANTS,

Vs.

JASPER JAMES LOWERY,

RESPONDENT.

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

TO THE HONORABLE H. M. HALL, JUDGE OF CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN EQUITY.

Now comes the Respondent in the above styled cause and files this his
demurrers to the allegations contained in the Complainant's petition and
says:

I.

That paragraph four (4) of said complaint is void under the statutes
of fraud.

II.

That paragraph five (5) of said complaint is void under the statutes
of fraud.

III.

That paragraph six (6) of said complaint is void under the statutes
of fraud.

IV.

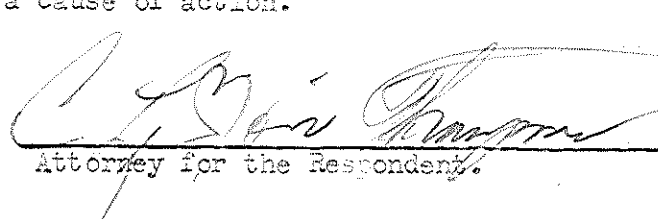
That paragraph seven (7) of said complaint is void under the statutes
of fraud.

V.

That paragraph eight (8) of said complaint is void under the statutes
of fraud.

VI.

That said petition does not state a cause of action.


Attorney for the Respondent.

3186

BERTHA MAE HUGHEN and
L. O. HUGHEN,

COMPLAINANTS,

VS

JASPER JAMES LOWERY,

RESPONDENT.

Demurrers

FILED

FEB 16 1954

WILLIAM L. DICK, Registrar

3186