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O. D. NELSON

VS.

T. M. ADAMS.

IN THE CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA.

JUNE 13, 1944.

HEARING BEFORE

HON. F. W. HARE, JUDGE.

FRANK NELSON, BEING FIRST DULY SWORN, TESTIFIED:

QUE: Is this Mr. Frank Nelson?

ANS: Yes, sir.

QUE: Where do you live?

ANS: Bonsecour.

QUE: Where?

ANS: Bonsecour.

QUE: How long have you lived there?

ANS: I have lived there since 1890.

QUE: Do you know the lands in Baldwin County, Alabama, described as the SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 11, Township 9 Range 3 E.?

ANS: Well not as far as that description goes - I wouldn't know anything about it.

QUE: Do you know the Dawson Nelson lands?

ANS: Yes, sir.

QUE: Did you know Andrew Munn?

ANS: Yes, sir.

QUE: Did you know W. Steiner during his life time?

ANS: Yes, sir.

QUE. Mr. Nelson, did you at one time own some lands near what is known as the Canal?

ANS: By the canal.

QUE: Do you remember the section that it was in?

ANS: No, sir.

QUE: Did you purchase that land -?

ANS: Yes, sir.

QUE: When did you purchase that land, Mr. Nelson?

ANS: I think 1897.

QUE: To whom did you sell that land?

MR. HYBART: We except. The deed is the best evidence.

QUE: Who did you sell it to?

ANS: Dawson Nelson.

QUE: Where were you living at in 1907?

ANS: Up here on the place I bought from --

QUE: How many acres?

ANS: 20 acres, more or less.

QUE: What form was it in --Was it a regular part of a sub-
division?

ANS: Kinder cut out of a forty.

QUE: What forty is that?

ANS: That is the forty we are talking about. Mine is up
here (indicating) beginning from the second stake.

QUE: How many acres do you have?

ANS: 2- acres.

QUE: You were living on that property in 1907?

ANS: Yes, sir.

QUE: Is that known as the Shellbank on the assessment book?

ANS: I don't know.

QUE: Do you know any other Frank Nelson down there?

ANS: No, sir.

QUE: Mr. Nelson, how many acres of land did you own in Baldwin County in 1907?

MR. HYBART: We object.

QUE: Did you own another 20 acres?

MR. HYBART: We object. The deed is the best evidence.

MR. HALL: We offer in evidence certified copy of tax assessment for that year, which is marked paid.

MR. CHASON: We ~~object~~ object. On the ground that it is not a proper assessment of any piece of land; that it is a void assessment.

THE COURT: IN Other words, I don't know whether you could find it or not---

MR. CHASON: There is no starting point - It says beginning at a certain place and running northwesterly direction close to the north side -- to two oak trees - no natural boundary or government subdivision or anything that would enable you to locate the land.

THE COURT: What do you say, Mr. Hall?

MR. HALL: Mr. Nelson says that he lived down there - that

he owned 20 acres of land that he assessed - that he paid tax on 20 acres of land.

MR. HYBART: ~~Mr. Hybart:~~ I have not seen any evidence of his ownership

MR. HALL: He said he didn't own but 20 acres of land and that he paid tax on 20 acres. The certified copy of the assessment shows that.

QUE:

THE COURT: It shows the number of acres improved 5, unimproved 15 - total 20 acres - Well it looks to me like that --if that is a void assessment, any sale under it would be void:

MR. CHASON: That is not the assessment. We are claiming under a sale of W. A. Reid, who was the owner at that time---

QUE:

MR. HALL: You say there were 20 acres?

ANS: Yes, sir.

QUE: You live on it?

ANS: Yes, sir.

QUE: Any of it in cultivation?

ANS: Yes, sir.

QUE: How many acres in cultivation?

ANS: All but a couple of acres.

QUE: In 1907 ---

ANS: ----

Q: That is all of the land you owned? ✓

A: Yes, sir. I never have owned any other land.

MR. HALL: It refers here to 20 acres of land he acquired before assessing it, and he assessed only 20 acres of land, and paid tax on 20 acres of land, and he is Frank Nelson, and I don't see how it could be more definite.

MR. CHASON: Our tax deed was under an assessment of W. A. Reid, which specifically described the 40 acres by government subdivision.

THE COURT: Describes this whole 40 acres?

MR. CHASON: Yes, and other lands - our 40 acres is included in the tax deed. It recites that it was assessed to W. A. Reid, No. 1., for the year 1907; that the taxes were not paid, and all of the requirements that were supposed to go in the tax sale were met. In conflict to our deed, they are attempting to show that Mr. Nelson owned some 20 acres of land in the neighborhood of this land, with a vague and indefinite description, and attempting to show that they paid taxes and assessed our forty acres of land, and we don't think that description is sufficient.

MR. HYBART: In addition, there is certain evidence of ownership - Where are his deeds - That is the evidence that the law sets up - He just says he owned the land - go one step further and show some color of title - possession - just says, "I own it" That's no evidence. We are making that objection there.

THE COURT: I am worried principally about the description of the land -

MR. HYBART: I think it is a void description?

MR. HALL: Years ago when the tax assessor went around - in 1905 and 1906 and established a practice that they would describe lands by metes and bounds and later on about 1923, they decided that there must be a definite location --definite locatable description.

QUE: Mr. Chason: Here is a deed the same year describing the land accurately and here is our land - SW $\frac{1}{2}$ of NW $\frac{1}{4}$ - that is a tax deed under Reid.

The Court~~QUE~~: Reid just assesses the whole forty--

MR. CHASON: Yes.

MR. HALL: We contend that Mr. Frank Nelson assessed 20 acres, and that Mr. W. D. Steiner assessed 6 acres and Andrew Munn assessed 14 acres, and we have definitely identified it by the plat -- it will be left to the Court

as to whether it - whether the surveyor knew what he was doing . We have had it surveyed, locating the property.

THE COURT: A recent survey?

MR. HALL: Yes.

QUE:

THE COURT: I will inquire from the surveyor myself whether he can locate this land.

MR. HARRY PARKER, SURVEYOR, BEING CALLED IN:

QUE: Is this Mr. Harry Parker?

ANS: Yes, sir.

QUE: THE COURT: You are a land surveyor?

ANS: Yes, sir.

QUE: How long have you been in that business?

ANS: About 40 years.

QUE: Will you look at that description there and tell me whether or not, a surveyor could locate the piece of land described therein? (Hands him assessment, which he reads)

ANS: Well, Judge, I did locate that piece of land.

QUE: It can be done?

ANS: Yes, sir.

MR. CHASON:

QUE: WHERE was your starting point, Mr. Parker?

ANS: By taking this description and locating the land --

QUE: Located the lands solely from this description*
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ANS: Shall I tell you the way I located it?

QUE: No. If you were going to take this description that reads: "Beginning at a certain stake, what stake would you use?"

ANS: I found one there.

QUE: You would go in Section 11, some where and find a stake?

ANS: Mr. Nelson was living on the land, and so I went to the 2 oaks and ran back to the stake and ran back down this way (indicating) to another stake and then went around this way (indicating)

QUE: Would you know whether that stake that you found was the same stake that was there in 1907?

ANS: No. There is no way to get that but by the oaks.

QUE: Running in a northerly direction close to two oak trees?

ANS: Yes, sir, there were two oak trees there.

QUE: Any other oak trees there?

ANS: No, sir.

QUE: How close did you go to those two oaks?

ANS: I ran just enough to clear them about a foot.

QUE: How far did you go from that stake to those oak trees?

ANS: 776 feet.

QUE: Now then, running from those oak trees, do you know where the dividing line between some man Hansen

and Miller line in 1907?

ANS: They said so --

QUE: Who?

ANS: Mr. Nelson and Mr. Parker.

QUE: In order for you to identify this, you had to take Mr. Nelson -- what Mr. Nelson said about the stake and land line?

ANS: No. He was living on the land.

QUE: Your survey is exactly the piece of land that Mr. Nelson showed you and told you was the same as this?

ANS: Well, yes, I surveyed the land where he is.

QUE: Where he lived and where he told you was the same land as covered by this description?

ANS: Certainly.

QUE: Without Mr. Nelson telling you where to go, you could not have surveyed out that land properly from this description?

ANS: I notified all persons -

QUE: That is not what I said - If you had taken this description alone and by yourself, without any information from any one else, could you have found the stake that you refer to - the dividing line that is talked about, and follow that line to another stake, and then getting from there back to the point of beginning, and made a plat that you would

have been willing to swear was the same land as covered by that assessment?

ANS. Well-----

QUE: Answer yes or no, could you, without any information, and from that assessment alone?

ANS: The law requires me to notify the parties --

QUE: We are not talking about getting information from others - Could you with that plat alone, have located that land as set out in that description - from that assessment alone, and been willing to swear that it was true and correct?

ANS: I could not do that without calling the neighbors in. ✓

MR. HALL

QUE: Isn't it the custom of surveyors that you always inquire for the old land marks? P

ANS: Yes.

QUE: First get the information from the old residents and check that?

ANS: Yes, sir.

QUE: You took the information that Mr. Frank Nelson furnished and checked it against the description -

ANS: Yes, sir.

QUE: Did you definitely locate the land?

ANS: Yes, sir.

QUE: Did you make a plat of that survey?

ANS: Yes, sir, that is a plat of it.

QUE: That is the plat you made (indicating)

ANS: Yes, sir.

QUE: Is that a correct plat?

ANS: Yes, sir.

QUE: Which is Mr. Nelson's land?

ANS: This piece on this side (indicating).

THE COURT: I think if it is so that it can be made certain that is sufficient?

MR. CHASON: By hear-say evidence -

THE COURT: That is the only way you can get a description ---by calling in the neighbors.

MR. CHASON: We except. ✓

MR. NELSON BEING RECALLED, CONTINUED ON DIRECT EXAMINATION

QUE: Do you know Mr. W. Steiner?

ANS: Yes, sir.

QUE: What was his first name?

ANS: Willie Steiner.

QUE: Do you know about when he died?

ANS: He died about a couple of years ago.

QUE: Wasn't there a W. Steiner that owned some land near your land?

ANS: Yes, sir, down the bay kinder, adjoining the bay.

QUE: Did he own any land to the north of you?

ANS: No, sir.

ANS: No, sir.

QUE: Where did Mr. John Miller - Do you remember him?

ANS: Yes, sir, he owned a piece of land next to my piece.

QUE: Do you know P. Hansen?

ANS: Yes, sir.

QUE: Where did he own some land,

MR. HYBART: We object. The deeds are the best evidence
as to who owned the land.

MR. HALL - That is the assessment- W. Steiner, which we
submit he paid the taxes that year and there
is no way to identify it except --

QUE:

THE COURT

JUDGE HEARE: This is the same thing here - What does W.
Steiner have to do with it?

MR. HALL: He was the owner for that year.

THE COURT: You mean - what year?

MR. HALL: 1907.

QUE: Assessed the same tract of land?

MR. HALL; that is 20 acres - six and fourteen acres ---

THE COURT: Yes - the whole thing is 40 acres - I am going
to hold this: That if there was an assessment
of any part of the land involved and I under-
stand this involves a forty acres instead of 20-
but the suit involves a 40 - I am going to hold
this - If there was an assessment of any part
of it, even though from that particular assess-

ment, it might not have been possible to identify the particular land as it was such assessment under the doctrine of -----

In otherwords, that is certain which is able to be made certain. That is the theory that I am going on.

MR. HALL: You admit that assessment - THE COURT: Yes-

MR. CHASON: We except

MR. CHASON: An exception on each assessment--

MR. HYBART: We move to exclude the assessment on the ground that no valid evidence as to the ownership on the part of Mr. Nelson is shown. Mr. Nelson has shown us no deeds- no color of title.

THE COURT: I think -

MR. HYBART: I would like to get a ruling on that.

THE COURT: I think he will have to show some ownership. He alleges that the taxes were paid by the owner, not only that it was assessed by the parties --

MR. HYBART: They showed us no deeds or anything, no more than just said, "I am the owner of the place" that is not the way to prove ownership.

THE COURT: I don't think so either. Either paper title or adverse possession under color of title.

MR. HALL: That will bring us to the proposition that we will have to go - a moment ago you let him testify that he was the owner -

THE COURT: In overruling his objection I had in mind that your question was purely preliminary and that you would either show adverse possession of it - -

MR. HALL: It puts me to the proposition of having no paper title - We will have to show adverse possession.

THE COURT: I think he ought to have paper title.

MR. NELSON- CONTINUES:

QUE: Mr. Nelson, this land that we were discussing a moment ago - When did you move on this land?

ANS: About 10 years ago.

QUE: When -

ANS: In 1897.

QUE: What year did you move there?

ANS: I think it was 1897.

QUE: How long did you live on it?

ANS: Up to 1933.

QUE: During that time you actually occupied this 20 acres of land as a homestead?

ANS: Yes, sir.

ON CROSS EXAMINATION BY MR. HYBART, WITNESS TESTIFIED:

QUE: Mr. Nelson, you say that you bought this land?

ANS: Yes, sir.

QUE: Got a deed to it?

ANS: I did have. I turned the deed over to the one
I sold it to.

QUE: You know where that deed is?

ANS: In his possession some where. I give him a deed
and the old original deeds.

QUE: Who did you sell it to?

ANS: Dawson Nelson.

QUE: You turned over the deeds to him?

ANS: Yes, sir.

QUE: Who did you get the deed from?

ANS: I think from Pete Hansen. He owned the whole tract
with the exception of 6 acres.

QUE: Pete Hansen living or dead?

ANS: Dead.

MR. HYBART: We move to exclude the statement that he bought
it from Pete Hansen. He hasn't got a deed
here, and on the further ground that
it is a transaction with a dead person.

THE COURT: You brought it out.

QUE: Mr. Hybart: I made inquiry as to that for the purpose
of getting at - Does your Honor permit/him^{ted} to say that
he bought the land - I wanted to find out who he

bought it from?

THE COURT: I Will give you an exception.

DAWSON NELSON, BEING FIRST DULY SWORN, TESTIFIED.

QUE: Is this Dawson Nelson?

ANS: Yes, sir.

QUE: Do you know the lands described as the SW¹/₄ of NW¹/₄,
Section 11, Township 9 Range 3, Baldwin County, Ala?

ANS: Yes, sir.

QUE: How long have you know this land?

ANS: About 8 years.

QUE: Mr. Nelson, sometime years ago did you employ any one
to survey this property?

ANS: Yes, sir.

QUE: Whom?

ANS: Mr. Frank Walker.

QUE: Is he here today?

ANS: Yes, sir.

QUE: Do you know whether or not he surveyed those lands -

ANS: Yes, sir, I went with him.

QUE: After that deed was executed what did you do with
it?

ANS: Mr. Frank Walker kept them in his possession -
in his office.

QUE: At that time where were you living?

ANS: Bonsecour. Shortly after that I moved to Florida.

QUE: You have been to see Mr. Walker with reference to

that original deed?

ANS: Yes, sir.

QUE: How many years ago was that deed secured?

ANS: I would say eight years ago.

QUE: You have searched Mr. Walker's place?

ANS: Yes, sir. We found a carbon copy of the deed but couldn't find the original.

QUE: You mean the carbon copy of the unexecuted deed?

ANS: Yes, sir.

QUE: Mr. Nelson, just recently, have you secured a deed to this property?

ANS: Yes, sir, from the H. B. Hansen heirs.

QUE: Look at that deed?

ANS: Yes, sir, I recognize it.

QUE: Those grantors - who are they?

ANS: Well Raz Hansen was H. B. Hansen's oldest son. Charles Hansen was his son also.

QUE: The rest of these are grand children -

ANS: Yes, sir.

QUE: Were all of the others dead - We -

ANS: We also have deed from one of his sons, Ed Hansen in Bi/loxi, Mississippi.

QUE: Is that what you mean?

ANS: Yes, sir. Ed Hansen and his wife.

QUE: What is this Hansen, Mr. Nelson?

ANS: Richard Grant. He is a grandson of William Steiner.

MR. HYBART: That evidence -- you have not introduced them yet though?

ANS: That is also some more of H. B. Hansen's grand children.

QUE: Those deeds are all to you?

MR. HYBART: We object. The deeds would be self proving, and have to be recorded - The witnesses should be here.

MR. HALL: We offer those deeds in evidence in lieu of the deed that was lost?

MR. HYBART: We object to the introduction of those deeds, because they are not self proving. Furthermore there is no evidence of any title in these several grantors.

QUE: Mr. HALL: I introduced them to show that he was the owner.

MR. HY ART: If they had been recorded -

MR. HALL: I introduce the original -

THE COURT: Dated this year?

MR. HALL: Yes, this year, in lieu of the deed that was lost -

MR. HYBART: Mr. Chason makes the statement that the suit was started in March. They are dated in April. The point I am making - a deed is admissible when executed before a notary public when it

m plaint because he alleges that he was the owner
 of the property and I think the deed should be prior
 to the filing of the suit.

THE COURT: In otherwords, he should have had the title at
 the time of the filing of the bill?

MR. HALL: I will withdraw the deeds for the moment.

FRANK W. WALKER, TESTIFIED AS FOLLOWS:

QUE: Is this Mr. Frank W. Walker?

ANS: Yes, sir.

QUE: Do you live at Foley?

ANS: Yes, sir.

QUE: Do you know Mr. O. D. Nelson?

ANS: Yes, sir.

QUE: In 1936 were you employed by Mr. O. D. Nelson to
 secure some papers?

ANS: Mr. Covat, he really had the employment.

QUE: You were in the same office with him?

ANS: Yes, sir, I did a good deal of work there.

QUE: You had at the time known Mr. O. D. Nelson for
 quite sometime?

ANS: Since 1914.

QUE: In 1936 you say you did do some work through Mr.
 Covat for Mr. O. D. Nelson?

ANS: Yes, sir.

QUE: At that time did you have anything to do with

securing conveyances from parties down below Foley?

ANS: Yes, sir.

QUE: Do you know any of those parties?

ANS: I believe I knew nearly all of them personally.

QUE: Did you secure deeds from the parties?

ANS: Yes, sir.

QUE: Lula Calloway, Thomas Calloway - do you know them?

ANS: Yes, sir.

QUE: Celia Steiner, and H. E. Steiner?

ANS: Yes, sir.

QUE: Who was H. E. Steiner?

ANS: H. Steiner.

QUE: Rosana Calloway?

ANS: I believe she was a a sister of Nelson's wife.

QUE: Dawson Nelson's wife?

ANS: Yes ---

QUE: At that time did you secure conveyances from them?

ANS: Yes, sir.

QUE: What did you do with that deed?

ANS: I don't know. We have looked for it. Mr. Nelson figures that he left it with me when he went to Florida. I have no recollection what went with it since Covat's death - the papers have been scattered pretty bad. I happened to hold a carbon copy that I recognized as being a copy of the deed that was signed.

QUE: You actually saw it signed and had possession of it?

ANS: Yes, sir.

QUE: That is an exact carbon copy of the deed?

ANS: Yes, sir, but there are no signatures to it.

QUE: Have you, at Mr. Nelson's request, made a search there of your office?

ANS: Yes, sir.

QUE: Have you been able to find that deed?

ANS: ^{No} Yes, sir.

QUE: When was it first found that you did not have that deed?

ANS: It seems as though it was several months ago. I can't tell whether a year or not, but it was sometime ago, and he asked me for it. It might have been longer than that. There is nothing that I can find to fix the time at which we discovered it was gone. But since that time I know that Dawson and Harry Parker have come to my office and together with them we have gone through everything that we could find.

QUE: You did find the carbon copy?

ANS: Not then. I did one day when I was going through the file.

MR. HALL: May it please the Court. We want to show this showing that it was a copy of the lost deed?

MR. MYBART: Just before - As I understand, Mr. Walker that Mr. Covat was employed to secure these papers, is that right?

ANS: He was the lawyer in the case.

QUE: What are you, a Justice of the Peace or Notary Public?

ANS: Notary Public.

QUE: Were you a Notary Public then?

ANS: Yes, sir.

QUE: Where did you have your office?

ANS: In the Brick Building on Lot 23 in the Town of Foley.

QUE: Where did Mr. Covat have his office?

ANS: Same room.

QUE: Did you turn the papers over to Mr. Covat?

ANS: I thought I gave them to Dawson Nelson. I knew that I had them around there for sometime. He says that he can't find them. He thought that I had them.

QUE: Did you ever turn them over to Mr. Covant?

ANS: I brought them in to him. I had all of the contact with Dawson. He was a friend of mine.

QUE: You brought them in and turned them over to him?

ANS: Yes, sir.

QUE: Do you know what Mr. Covat did with them?

ANS: If I know anything about it, he gave them to me to file.

QUE: That is your recollection?

ANS: Yes, sir.

QUE: Afterwards, you made a search for the papers there in the office?

ANS: Yes, sir.

MR. HALL: I introduce this carbon copy of the deed.

QUE: Mr. Walker, at - about that time or immediately subsequent to that time, did you see Mr. R. L. KIRKland?

ANS: I am pretty sure that I did.

QUE: Do you remember - you were representing Mr. Dawson Nelson at that time?

ANS: Yes, sir.

QUE: Did you have any agreement with Mr. KIRKland with reference to the land, or timber?

ANS: I am very hazy on that, but it seems that there was an agreement. I don't think it was made with me. The best I can remember Mr. Nelson told him that he could go ahead with the turpentine.

MR. HYBART: Were you present at that conversation -

MR. HALL: Is that a conversation between Mr. Nelson and Mr. Dawson Nelson and you and Mr. KIRKland?

ANS: I don't think Dawson and KIRKland were together.

QUE: Did you have a conversation with Mr. KIRKland about that?

ANS: I can't be too sure of that.

QUE: What was that conversation about --

ANS: It was in regard to whether that was Dawson's land- He was trying to prove up on it and didn't want them to turpentine it without an agreement from them.

QUE: What did KIRKland have --

ANS: I can't be sure, but I think Dawson said that they had an agreement between them as to how they would go ahead---

with it. I don't have any memoranda that I can say who it was
with ---

QUE: You lost your memoranda?

ANS: I never had one. That was a good many years ago and along
when I was pretty busy as usual.

QUE: About that time, did you know Mr. Frank Nelson in there?

ANS: Yes, sir.

QUE: Did you get a deed from him?

MR. HYBART: We object. The deed is the best evidence--

MR. HALL: It is lost -

QUE: Did you get the deed from Mr. Frank Nelson?

ANS: Yes, sir.

QUE: What did you do with that deed?

ANS: It went the same way as the others.

QUE: Have you searched your files there?

ANS: Yes, sir.

QUE: You can't find it?

ANS: No, sir. Not only Frank Nelson but Frank's wife --

QUE: They signed the same deed?

ANS: Yes, sir.

QUE: You have not been able to find that deed?

ANS: No, sir.

QUE: That deed was for Mr. O. D. Nelson?

ANS: Yes, sir, for the 20 acres that Frank lived on
previous to that. He wasn't living on it at the time

he made his deed.

ON CROSS EXAMINATION BY MR. HYBART, WITNESS TESTIFIED.

Q: What was the description of that land?

A: The nearest I can remember - I have helped survey it - it began at a stake and went in a northwesterly direction past two oak trees to Miller's land. Incidentally, the Miller land joined Frank Nelson on the west and along between the line between him and Miller down to, I think the Munn land was the 40 right south of that and then along the dividing line between Nelson and Miller Eastwardly to a point, and then ran northeast to the point of beginning. If I could see the description, I could remember it pretty well. I know the land and I know the course in which it would lie.

Q: When did you help survey it?

A: I can't tell you.

Q: Who did the surveying?

A: Harry was in charge and I was assisting him.

Q: Harry Parker?

A: Yes, sir.

Q: You can't tell when that was?

A: No, sir.

Q: You started at a stake ?

A: Yes, sir.

Q: What sort of a stake?

ANS: I don't know.

QUE: Don't know how far it was located from the southeast corner of the subdivision?

ANS: No, sir.

QUE: Whether it was a stake in the pond, or whether that --

ANS: On account of the location of it -- There is a little road that ran along by my father's place to the store, and on the west side of that there was a little foot place that we crossed a ditch and went across towards Frank Nelson's house, and when we came from my fathers, and right near that in the corner of a pond was a stake --

QUE: You can't tell what sort of looking stake that was?

ANS: No, sir.

QUE: How tall it was?

ANS: Seems to me it was like that (indicating*)

QUE: What direction did you run?

ANS: Northwesterly.

QUE: How many feet?

ANS: I don't know.

QUE: You ran near 2 oaks?

ANS: Passed 2 oaks.

QUE: Any other oaks down there besides those 2?

ANS: Might have been.

QUE: Did you notice any other oaks?

ANS: No.

QUE: What size were those oaks?

ANS: I believe they were pretty nearly 2 feet.

QUE: How far apart were these oaks?

ANS: 20 or 30 feet.

QUE: You run between whose land?

ANS: Between Frank Nelson's land and I believe they called it the Munn Land.

QUE: Do you know the lines of the Munn land?

ANS: Nothing but the description of what they gave us to run on.

QUE: You did not know the Munn lines?

ANS: I DIDN'T know which was which, except by the description.

QUE: You run which way?

ANS: Northwest to where we came to the trees and beyond the trees until we got to the west side of the forty acres and that I know corners with the 6 acres in the North - the 6 acres was cut square across the North end of the 40. ✓

QUE: Are you a surveyor?

ANS: I believe I am.

QUE: Harry Parker was in charge and you were there with him.

ANS: Yes, sir.

QUE: Now you say that you had a deed from Mr. Nelson, which Nelson?

ANS: Frank and his wife.

Q: What is her name?

A: I don't remember her name.

Q: Did you prepare the deed?

A: I drew that as I did the others with Covat - Covat told me how to write it.

Q: You prepared the deed?

A: Yes, sir.

Q: Did they sign it before you?

A: Yes, sir.

Q: You say that you kept the deed or did you deliver it to the grantee?

A: I believe that the grantee got them.

Q: That is your best judgment - the Grantee got them?

A: Yes, sir.

Q: Who was the grantee?

A: O. D. NELSON.

MR. NELSON, Testified:

Q: Mr. Nelson, do you know Mr. Kirkland?

A: Yes, sir.

Q: Did you along about 1936 or thereabouts have a conversation with Mr. Kirkland with reference to the land involved in this suit?

A: Yes, sir.

Q: Where did that conversation take place?

A: At my gate on the river.

QUE: That is Mr. R. L. Kir~~R~~land?

ANS: Yes, sir.

QUE: He came to your place?

ANS: Yes, sir.

QUE: What was the conversation - At that time was he running a turpentine place?

ANS: Yes, sir.

QUE: Kir~~R~~land Turpentine Company?

ANS: Yes, sir.

QUE: What was the conversation between you and Mr. Kir~~R~~land with reference to this land?

ANS: That was right at the beginning when he begun to Turpentine the land and I told him that I was getting deeds to the land - that it belonged to him and he told me that he had a legal lease to it, but he had only paid 1 year's lease on it and he seemed to agree with me that I was entitled to the land and told me to go ahead and clear the title - that he had only paid one year's lease on it and he would pay me the rest of the lease money and to go ahead and clear the land up.

QUE: About that time did you go into ~~ess~~ the process of getting any title?

ANS: Yes, sir.

QUE: Whom did you get to do that?

ANS: Mr. Walker.

Q: Was he in Foley?

A: Yes, sir.

Q: You remember Mr. Covat?

A: Yes, sir.

Q: They were there together?

A: Yes, sir.

Q: Do you know whether or not Mr. Walker secured deeds?

A: Yes, sir.

Q: Did he ever secure those deed -- did he ever deliver those deeds to you?

A: No, sir he had them in his office.

Q: Did you leave the deeds with him?

A: Yes, sir.

Q: FOR what purpose?

A: For him to intercede with Mr. KIRKland and clear the title and have a settlement with Mr. KIRKland.

Q: The deeds were never delivered to you?

A: No, sir, I moved to South Florida and was gone for several years.

Q: You had entrusted to Mr. Walker --- You had intrusted that to Mr. Walker?

A: Yes, sir.

Q: Now, Mr. Nelson, some few years ago and prior to the filing of this suit, did you go down to this land?

ANS: Yes, sir.

QUE: When was that - about?

ANS: Well I couldn't tell you exactly.

QUE: Within the last year or year before -

ANS: It was, I think it was last year.

QUE: At that time was any one in possession of this land so far as you could see?

ANS: No, sir, No.one.

QUE: Who was with you, Mr. Nelson?

ANS: Mr. Parker and Mr. Graham, a government surveyor.

QUE: Harold Graham and Harry Parker?

ANS: Yes, sir.

QUE: You made a complete survey of it?

ANS: Yes, sir.

QUE: Do you know whether or not plats were made of it?

ANS: I think Mr. Parker made a plat.

QUE: At that time what did you do?

ANS: Immediately after that we went down and put up a fence?

QUE: Anybody on the land?

ANS: No, sir.

QUE: Any visible possession?

ANS: No, sir.

QUE: You put up a fence?

ANS: Yes, sir.

QUE: What kind of fence?

ANS: I also put up trespass signs.

QUE: What kind of fence did you put put?

ANS: Barb wire.

QUE: One or two strands?

ANS: 2.

QUE: About how much land did you fence in?

ANS: About one acre near the old Frank Nelson house.

QUE: The approach to the land?

ANS: Yes, sir.

QUE: Since you put those up -

ANS: Yes, sir, I put up 8 signs.

QUE: Your name on them?

ANS: Yes, sir.

QUE: When is the next time you went down there, Mr. Nelson?

ANS: Well I think some three or four months ago when I found Mr. Adams had been on there cutting the timber.

QUE: Could you tell from observation when the cutting was done?

ANS: It had just begun.

QUE: What day of the week?

ANS: Sunday.

QUE: When was the injunction gotten?

ANS: Monday and served Tuesday.

QUE: In otherwords, you were there on Sunday and got the injunction Monday and it was served on Tuesday?

ANS: Yes, sir.

Q: Your fence was down there prior to the time of this suit?

A: Yes, sir.

Q: What happened to the fence?

A: Torn down and pulled off the land and the signs torn down.

Q: Do you know who was cutting that wood, Mr. Nelson?

A: Well, I didn't see any one on it, but I was informed that Mr. S. M. Adams, Jr.

Q: Did you give him any permission to go on there and cut that timber?

A: No, sir.

Q: What type land is that?

A: Well it is a sandy soil.

Q: Valuable for what purposes?

A: Well for timber.

Q: That is the chief value?

A: Very good farming land for early crops.

Q: It's chief use would be for growing timber?

A: Yes, sir, and raising of cattle.

Q: Mr. Nelson, has Mr. Kirkland or any of the Respondents paid you anything for the use of turpentine timber?

A: No, sir.

Q: For wood or cutting of wood?

A: No, sir.

ANS: No, sir.

QUE: That was done without your consent or permission?

ANS: Yes, sir.

ON CROSS EXAMINATION WITNESS TESTIFIED:

QUE: What are you initials?

ANS: O. D.

QUE: Where are you living now?

ANS: Fairhope.

QUE: And you say that you had a conversation with Mr. ~~Kirk~~
land about the turpentineing of this timber - when was that?

ANS: Well, just what day I could not say.

QUE: About how many years ago?

ANS: Must have been about 8 years ago.

QUE: He was there at that time turpentineing this property, wasn't
he?

ANS: Just begun to cup the timber.

QUE: Was in possession of the property there?

ANS: Taken possession of the property at that time.

QUE: You saw the tree blazes there?

ANS: Yes, sir.

QUE: How long did he proceed to turpentine that time?

ANS: I just said I moved out of the state, but from the looks
of the trees he must have cupped them for four or
five years.

QUE: Four or five years later - you must have come back?

ANS: Yes, sir.

QUE: Went down to this place and put up some signs there?

ANS: I did.

QUE: At that time, Mr. Kir~~R~~land had been turpentineing the place for more than three years, had he not?

ANS: I imagine he had.

QUE: Then you - in addition to putting up the signs, you went about the the center of the place and put up a fence?

ANS: Yes, sir.

QUE: Which fence was afterwards torn down?

ANS: Yes, sir.

QUE: The signs were torn down?

ANS: Yes, sir.

QUE: When did that happen?

ANS: Since - sometime last year.

QUE: When you put him your signs and fences the cups were still on the trees?

ANS: May have been and - may have been a scattered out here and there. There was nothing there of any value.

QUE: You say that you had this conversation with Mr. Kir~~R~~land some eight years ago?

ANS: Yes, sir.

QUE: Where were you?

ANS: At my front gate at Bonsecour in Baldwin County.

QUE: Do you remember the time of the year, or the time of the day

ANS: No, sir, I couldn't tell you the day, but it was in the spring.

QUE: Did you send for him?

ANS: He drove up to my front gate to ask me about my property line. He was also turpentineing some timber over there - not this place, but another place.

QUE: Who was present?

ANS: Just Mr. Kir~~land~~ and I.

QUE: At your front gate about eight years ago?

ANS: Yes, sir.

ON RE-DIRECT EXAMINATION WITNESS TESTIFIED:

QUE: Have you had any other conversation with Mr. Kir~~land~~ with reference to this land?

ANS: No, sir, I have not.

QUE: He has never recinded the agreement you made that day?

ANS: No, sir.

QUE: At that time he was turpentineing some of your land across the river?

ANS: No, sir, not mine. Some adjoining land.

QUE: He was the one that brought up the conversation about the forty acres?

ANS: I think I brought up that conversation with him.

QUE: It was agreed between you and him that he go ahead and turpentine it?

ANS: As I said, he told me to go ahead and clear the title

-----That he had paid one years lease and for me to clear the title
and he would pay me the rest of the lease.

ON RE-CROSS EXAMINATION:

Q: Is that the only conversation you had with him?

A: No ---

Q: You never asked him for any money under this lease?

A: I turned it over to Mr. Walker.

Q: You never got any money out of him on the lease?

A: No, sir.

ON RE-RE-DIRECT EXAMINATION WITNESS TESTIFIED:

Q: Mr. Nelson, what is your wife's name?

A: Elvira.

Q: What was her maiden name?

A: Munn.

Q: What was her father's name?

A: Andrew Munn.

Q: On a part of this land - is that the same Andrew
Munn -- This description here?

A: Yes, sir.

Q: Did he live here?

A: He lived at Bonsecour. He didn't live on this land but
he farmed this land.

Q: How long did he live on this land?

A: Mr. Munn - to my knowing he must have farmed it 12 or
15 years.

QUE: Abegail Munn his wife?

ANS: Yes, sir.

QUE: Your wife is a daughter of Andrew Munn?

ANS: Yes, sir.

QUE: How much of this land did he farm, Mr. Nelson?

ANS: I would say over five acres.

QUE: Is there an old place there known as the Munn Place?

ANS: Yes, sir.

QUE: On this 40 acres?

ANS: in the 40.

QUE: Part of the forty?

ANS: Yes, sir.

QUE: Do you know how many acres he owned in this 40?

ANS: 14. Mr. Munn did not live on it but his son, Tom Calloway did.

QUE: Thomas Calloway was a son-in law of Mr. Munn?

ANS: Yes, sir.

QUE: Who was Rosen A. Calloway?

ANS: She is Andrew Munn's oldest daughter.

QUE: Your sister in law?

ANS: Yes, sir.

QUE: You say your wife is one of the daughters of Andrew Munn, who owned 14 acres of this land?

MR. HYBART: We object to his owning ---

MR. HALL: Who occupied 14 acres of this land?

ANS: Yes, sir.

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MR. PARKER, BEING RECALLED TESTIFIED:

QUE: This is Harry Parker?

ANS: Yes, sir.

QUE: Mr. Parker, do you know Raz Hansen?

ANS: Yes, sir -

QUE: C. P. Hansen?

ANS: Yes, sir.

QUE: Where do they live?

ANS: Daphne.

QUE: I will show you this deed, Mr. Parker -

MR. HYBART: Is that one of the deeds you withdrew?

MR. HALL: Yes, sir.

QUE: Mr. Parker, have you seen that deed before?

ANS: Yes, sir.

QUE: Did Mr. C. P. Hansen - did you see him sign that deed?

MR. HYBART: We object to that. The witnesses to the deed
is the best evidence.

THE COURT: There is a statute on that - I think you have to
call the subscribing witnesses, except in certain
cases---

QUE: Mr. HYBART: The deed is not recorded. If the Notary
or witnesses are dead then you prove the signat-
tures---

MR. HALL: I look at it this way: We have a man that saw the
man actually sign his name - what is the difference.

THE COURT: C----

other deed to perfect the record title. We have shown deed from the Munn heirs from whom his wife was one and one from Frank Nelson.

MR. HYBART: I understand that Mr. Munn ~~didn't~~ ^{ed} claim/the land, but his son-in-law occupied it.

THE COURT: That is the way I understood it. That Munn owned it and the son in law was in possession.

MR. HYBART: I ain't seen the deed yet.

THE COURT: He was in possession of it 19 years - That is not the question before me. The question before me - This deed seems to be properly acknowledged, but acknowledged since the beginning of this suit. What effect does that have.

MR. HYBART: I say it is not admissible.

MR. HALL: Here is the possession. We have possession under his predecessors - Munn and Nelson for 19 or 20 years. The deed is lost. He was in possession. Then we come along and in order to perfect the title further following out the agreement with Mr. Kirkland we have secured additional deeds. What does it matter when the deed was executed. It gives him a right to redeem it -

THE COURT: That is not the question before the Court.

QUE-

MR. HALL: That was given to perfect the title. He was the owner - if he owned any part -

THE COURT: He might have been sufficient owner to authorize him to redeem under the Statute. I want pass on it.

MR. HYBART: He alleges that he is the owner and it should be shown.

THE COURT: What is the date of the filing of the bill?

MR. CHASON: February 21.

QUE: That was not a valid deed until it was acknowledged.

MR. HALL: That is right.

THE COURT: But the statute don't say when it has to be acknowledged in order to permit --

MR. HYBART: The title should then pass before the bill is filed.

MR. HALL: We have evidence before the Court -

MR. HYBART: If you have it - this won't help you . Can't have anything to do with it. It is irrelevant immaterial and incompetent --

THE COURT: This deed did not become operative until it was acknowledged, and you have to have title at the time the suit was filed, and at the time of the filing of the bill . Am I correct?

MR. CHASON: Yes, sir. That is common sense.

THE COURT: Sustain the objection.

MR. HALL: The Court understands that our bill is for an injunction and the affirmative relief . We ask that we be permitted to redeem .

THE COURT: Also for a permanent injunction I presume.

MR. HALL: No, sir, we do not. We just ask them to be enjoined and that we be permitted to redeem. We are willing to pay what we owe. ~~If this is ne~~ - There is no request for a permanent injunction.

MR. HYBART: A general prayer.

MR. HALL: This, in the event your Honor - Here read the prayer.
(The Court reads prayer in bill).

QUE:

THE COURT: If he is entitled to a temporary injunction, he would be entitled to a permanent injunction. As I understand the situation under my ruling you have proven only an interest in the property. No relief from certain heirs to the property, and with the ~~executi~~enexclusion of this, it leaves certain interest outstanding. That is the way i understand it.

MR. HALL: I think your Honor is right.

THE COURT: You have not proven any payment of the taxes?

MR. HALL: Who?

THE COURT: You.

MR. HALL: No, sir, I have not. That was way back there- I overlooked that.

THE COMPLAINANT RESTS.

MR. R. L. KIRKLAND, A WITNESS FOR THE RESPONDENT, BEING FIRST
DULY SWORN, TESTIFIED:

QUE: Your name, Please?

ANS: R. L. Kirkland.

QUE: Mr. Kirkland, you heard Mr. O. D. Nelson testifying
here on the stand, did you not?

ANS: Yes, sir.

QUE: Did you ever have any conversation with him at any time
at his gate or any where else?

ANS: Yes, sir.

QUE: What was that?

ANS: I don't remember just what the conversation was, but he
asked me about the property and I told him that I had
a lease on it.

QUE: What else was said?

ANS: There wasn't any agreement as to what disposition was
to be made of it. We didn't make any agreement.
He might have told me that he was going to clear title,
but I don't remember it..

QUE: Who did you have your lease from?

ANS: J. S. Lowrey. Simp Lowrey.

QUE: I believe there is a deed there - did you afterwards
purchase this property from Simp Lowrey?

ANS: Yes, sir, in 1937.

QUE: After you bought the property from Mr. Simp Lowrey, did

you go in possession of it?

ANS: I was already in possession of it.

QUE: Did you continue in possession of it?

ANS: Yes, sir.

QUE: How long did you turpentine it?

ANS: Right on through until last season. I intended to work it this season and Mr. Nelson filed an injunction.

QUE: In 1937 you became the owner and you continued in possession of it for more than three years?

ANS: Yes, sir, our cups and equipment are still there.

QUE: What did you do on it?

ANS: Turpented it.

QUE: Every tree suitable for turpentine?

ANS: Might have missed one or two.

QUE: Within the last year, did you see any signs up there?

ANS: My son reported that there was.

QUE: Did you notice any ~~signs~~ fence there?

ANS: My son said there was one ~~sign~~ Barb wire around possibly a half acre

QUE: You all continued in possession of it and were in possession of it until you were enjoined here?

ANS: Yes, sir.

QUE: You stopped operation?

ANS: Yes, sir, our equipment is still on it.

Q: Was anybody else operating on the place besides the
Kirkland Turpentine Company and -

A: Kirkland Turpentine Company sold S. M. Adams the timber.

Q: How long had he been operating before the injunction?

A: Just a few days. I wasn't present. I was over in
Mississippi.

ON CROSS EXAMINATION, WITNESS TESTIFIED:

Q: Mr. Kirkland, you were the Kirkland Turpentine Company?

A: It was H. L. Kirkland originally and later became the
Kirkland Turpentine Company.

Q: When did you first get the lease?

A: I think in 1936 - the best of my recollection. They have
the lease here among their files.

Q: It was something like a year later that you bought it
from Mr. Lowrey?

A: Yes, sir.

Q: During that time Mr. Nelson came and talked with you?

A: Yes, sir, I was cupping some of his brother's timber
and Mr. Steiner's property across the river and I went
there and talked with him and he mentioned about that
property and I told him that I had a lease on it and
had paid the first payment down on it.

Q: Did he say that he owned it?

A: I don't know. He said that he did ---

Q: Didn't he tell you that his wife was one of the Munn

heirs?

ANS: Yes, sir, but the abstract showed that the Munns did not own it.

QUE: Andrew Munn and Abegail Munn?

ANS: No, sir Peter Hansen, Andrew Munn never owned that property.

QUE: You remember showing me that abstract don't you?

ANS: Yes, sir, and I remember that abstract too. The property was patented to Thomas Nelson and I have a Photostatic copy, and he let Peter Hansen have it.

QUE: You know Peter Hansen?

ANS: No, sir.

QUE: Didn't he sell a part of that to Abegail Munn?

ANS: No, sir.

QUE: Frank Nelson?

ANS: No.

QUE: You knew that he had an interest in it?

ANS: No, sir.

QUE: You saw the abstract?

ANS: Yes, sir, but it didn't show that he owned it.

QUE: Didn't show a deed?

ANS: Yes, sir, but the description was erroneous.

QUE: Abstract showed it?

ANS: Yes, sir.

you go in possession of it?

ANS: I was already in possession of it.

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from Mr. Lowrey?

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property and I told him that I had a lease on it and
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A: I don't know. He said that he did ---

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QUE: You knew that he had an interest in it?

ANS: No, sir.

QUE: You saw the abstract?

ANS: Yes, sir, but it didn't show that he owned it.

QUE: Didn't show a deed?

ANS: Yes, sir, but the description was erroneous.

QUE: Abstract showed it?

ANS: Yes, sir.

QUE: Peter Hansen - did it show that he had a claim to it?

ANS: had formerly owned it.

QUE: William Steiner - or Willie Steiner?

ANS: I don't know.

QUE: Richard Grant?

ANS: No. There is the abstract. You can look at it.

QUE: Now you say that the man did have a conversation with you?

ANS: Yes.

QUE: You don't recall whether he said he owned it?

ANS: He didn't say that he owned it.

QUE: Isn't there a place known as the Munn place?

ANS: Not to my knowledge. There is a place known as the Frank Nelson place.

QUE: 20 acres?

ANS: No, sir, just a house place.

QUE: You knew that he had a claim on it?

ANS: I knew that he lived on it.

QUE: Was some understanding between you and Mr. Dawson Nelson with reference to the use of the timber, or what would be done?

ANS: No, sir.

QUE: Did you, after Mr. Nelson went on to Fort Myers Florida, receive a letter from O. D. Nelson?

ANS: I don't remember. I believe I did.

QUE: To refresh your mind, didn't you receive the original of that

ANS: Seems that I did. It seems that I did receive a letter from him. I don't know whether that is a copy or not.

QUE: In ~~the~~ substance to that?

ANS: I wouldn't say.

QUE: Did you have a conversation with Mr. Frank Walker?

ANS: On the telephone.

QUE: Did you recognize him as the agent of Mr. Nelson?

ANS: He told me that he and Dawson were working on the matter.

QUE: What was the conversation?

ANS: I don't remember. I told him that I had the property and abstract and didn't consider his claim.

QUE: Did you say that if it was found that he did have a claim that you would make it agreeable with them?

ANS: I don't remember saying that.

QUE: Did Mr. Walker make you a proposition? A proposition in accordance with the letter from Mr. Nelson?

ANS: No, sir.

MR. HALL: We want to introduce this letter from Mr. Nelson to Mr. ~~Kirkland~~

MR. HYBART: Is the date of the letter -

MR. HALL: I didn't notice - 1937 I think.

MR. HYBART: What time did he buy it?

MR. HALL: February.

QUE: Were you down there at the completion of the ~~Kirkland~~

Turpentine operations?

ANS: Never been completed.

QUE: Are the cups still there.

ANS: Yes, sir.

QUE: Were they not taken off last fall?

ANS: No, sir, still there right now.

QUE: Did you see the fence down there?

ANS: No, sir.

QUE: When was the last time you were there?

ANS: I don't remember exactly.

QUE: Have you been there during 1944?

ANS: I don't remember exactly.

QUE: Have you been there since last Christmas?

ANS: No, I have not been on the property.

QUE: What was the condition along in January and February of this year, you don't know do you?

ANS: I know what they told me.

QUE: Don't know of your own knowledge?

ANS: Just what was along the road - I could see the cups from the road.

QUE: On this forty acres of land?

ANS: Yes, sir.

QUE: You don't know whether it was sign since Christmas or not?

have to go in possession of it. They were already in possession of it.

ROGER LEE KIRKLAND, TESTIFIED AS FOLLOWS:

QUE: Your name, please?

ANS: Roger Lee Kirkland?

QUE: Where do you live?

ANS: Foley.

QUE: You are a member of the Kirkland Turpentine Co.?

ANS: Yes, sir.

QUE: You know the land involved in this suit?

ANS: Yes, sir.

QUE: How long has the Kirkland Turpentine - How long has Mr. R. L. Kirkland and the Kirkland Turpentine Company been in possession of this land?

ANS: I was quite young, but I do remember it.

QUE: How old are you now?

ANS: 22.

QUE: Can you remember back to 37?

ANS: Reasonably speaking, I can.

QUE: 1939?

ANS: Yes, sir, Turpented it in 1938 -- 1941.

MR. HALL: I want to interpose this objection. It is true under the 1940 Code that the 3 year statute running prior to that time -

MR. HYDART: 1937 is when that Section of the Code was rewritten.

MR. HALL: All right.

QUE: --Mr.

MR. HYBART: They had a modification in the 1923 Code , but in
1937 --

MR. HALL: I thought it was the 1939 Legislature that revamped
that.

MR. HYBART: It was Acts of 1935, page 256. That is when it was
modified. It was in the 1923 Code like you say--

QUE: Are there now any turpentine boxes on the property?

ANS: Yes, sir.

QUE: Still on the trees?

ANS: Unless some one has moved them recently. Could have
been a few knocked down.

QUE: Up to the time the injunction was served on you all
were there boxes up there?

ANS: Yes, sir.

ON CROSS EXAMINATION, WITNESS TESTIFIED:

QUE: When were you down there last, Mr. Kirland ?

ANS: ---

QUE: Since the suit was filed?

ANS: No, sir.

QUE: Have you been there during 1944?

ANS: I don't remember right off handed. It was after he put
the fence up.

QUE: You have taken the cups down since then?

ANS: I would not say.

QUE: Who is cutting the wood there?

ANS: I am told that Mr. Adams is. I didn't see him cut it.

QUE: That is not your equipment there - as a matter of fact there is no equipment there?

ANS: I wouldn't know.

QUE: You mentioned to Mr. Hybart that your equipment was still there?

ANS: ~~Kirk~~land Turpentine Company equipment is there,

QUE: You conveyed that to Mrs. ~~Kirk~~land and the boys in 1938?

ANS: Yes, sir.

QUE: Since that time you have had no occasion to go on the place?

ANS: Nothing but driving along the road.

QUE: You say a part of this forty is known as the Frank Nelson land?

ANS: I wouldn't say that.

ON RE-DIRECT EXAMINATION WITNESS TESTIFIED:

QUE: You you bought this land from Simp Lowrey, you bought it and claimed it as your own?

ANS: Yes, sir.

QUE: In 1938 you made a conveyance to Mrs. ~~Kirk~~land and the boys?

ANS: Yes, sir.

QUE: They went in possession of it, and claiming to own it?

ANS: They were already interested in it in a way. They didn't

ANS: No.

QUE: Is it your policy - the Policy of the Turpentine company to sell and convey the timber with the cups still on the trees?

ANS: No. But the Rosin man I had was drafted.

QUE: You did not move the cups.

ANS: No. I didn't have any one to take the cups off.

QUE: You let them go and cut the timber and lose the cups?

ANS: Yes, sir, they were practically worthless.

QUE: There is an old homestead site there?

ANS: Yes, sir.

QUE: Do you know the old Frank Nelson place?

ANS: Yes, sir.

QUE: Do you know the old Steiner place on the north end of it?

ANS: I know there are two little small clearings there.

QUE: The landmarks show that they had been there for 15 or 20 years or more from the present indications?

ANS: At least that long.

MR. S. M. ADAMS, BEING FIRST DULY SWORN, TESTIFIED:

QUE: Is this Mr. S. M. Adams?

ANS: Yes, sir, Junior.

QUE: Where do you live?

ANS: Fpley.

QUE: Are you acquainted with this land in suit?

ANS: Yes, sir.

Q: Have you been cutting any timber on it?

A: Yes, sir, for a short time.

Q: Did you go on the land?

A: Yes, sir.

Q: Notice any turpentine cups there?

A: Yes, sir.

Q: On the trees around there?

A: Yes, sir.

Q: You were just cutting the timber and removing the cups?

A: Ordinarily they take the cups off and set them of -

Q: Been turpented there?

A: Yes, sir.

Q: Appear to have been turpented for several years?

A: Yes, sir.

Q: Are you a turpentine man?

A: Yes, sir.

Q: From observation can you tell how many years it was turpented?

A: Yes, sir, I can tell you approximately how many years it had been worked by looking at the trees.

Q: How long would you say the trees had been worked?

A: Four or five years.

Q: Did you see where a fence had been?

O. D. NELSON

VS.

S. M. ADAMS, JR. ET AL.

TESTIMONY taken June 13, 1944, Monroeville,
Alabama, original filed in court and copies
furnished attorneys

\$25.00

Louise Johnson.

O. D. NELSON

VS.

S. M. ADAMS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

BRIEF AND ARGUMENT OF
RESPONDENTS

This matter comes up on motion to dissolve injunction on sworn answer to the Bill of Complaint and was heard by your Honor, all the witnesses testifying on said hearing.

The sworn answer disclosing by certified exhibits thereto, that the property involved, that is the SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 11, Township 9 S., R. 3 East, Baldwin County, Alabama, was sold for taxes, due for the year, 1907, the same being assessed to W. A. Reed, Number 1. At said sale W. M. Cannon became the purchaser of same and that on the 15th day of July, 1911, the Probate Judge of Baldwin County executed his deed as such to the said W. M. Cannon. See Exhibit "A" to sworn answer. Said sale for taxes was made on the 26th day of October, 1908.

The record further discloses that on the 6th day of September, 1935, W. M. Cannon, et al, sold said lands to J. S. Lowry. See exhibit "B" to answer.

The record further shows that on the 23rd day of January, 1937, J. S. Lowry sold and conveyed said lands to R. L. Kirkland. See Exhibit "C" to answer, and that on the 11th day of August, 1938, R. L. Kirkland sold said lands to Josephine Roger Lee, Robert, Otho, and Luther Joseph Kirkland. See Exhibit "D" to answer and that on the 23rd day of October, 1943, the Kirklands entered into a timber contract with S. M. Adams. See Exhibit "E" to answer.

That ever since the said Kirklands or either of them purchased said lands, they have assessed and paid the taxes. (See sworn answer) and that the complainant has not assessed or paid the taxes thereon. In all of complainants testimony he is silent on the subject of assessing and paying the taxes

on said lands.

POSSESSION OF THE KIRKLANDS

The sworn answer is to the effect that from the time of the purchase of the lands by R. L. Kirkland on the 11th day of August, 1938, the Kirklands have been in the open, notorious, and exclusive possession of said lands, claiming to own the same, and according to the evidence of Dawson Nelson, J. S. Lowry was in possession for a year or two, immediately preceeding his sale of the same to R. L. Kirkland. Dawson Nelson testified, See page 29 R, that in 1936 or thereabouts, he had a conversation with R. L. Kirkland in regard to these lands, at witness's gate on the river, that Kirkland was running a turpentine place and had begun to turpentine these lands, that witness told Kirkland that he was getting deeds to the land, that it belonged to him and Kirkland told him he had a legal lease to it but had only paid one years lease on it. Witness said that Kirkland seemed to agree that he was entitled to the land, (that he seemed to agree is purely a conclusion, and no probative force and inadmissible), that Kirkland told him to to ahead and clear the title, that he had paid one years lease on it and that he would pay witness the rest of the lease money. See p. 30 R.

On cross examination, see page 36 R, Dawson Nelson testified, "That R. L. Kirkland drove up to his front gate to ask him about his property line. He was also turpentineing some timber over there, not this place, but another place. It was about eight years ago." which would put it in 1936.

"that he had no other conversation with R. L. Kirkland with reference to this land" See page 36 R. "That at the time of this conversation, Kirkland was turpentineing some land across the river, that adjoined his!" "That he never got any money out of the lease." R. L. Kirkland testified that he leased this land from J. S. Lowry before he bought it from him in 1937. See p. 45 R. That he didn't remember just what the conversation was between he and Dawson Nelson, but that he asked him about the property and he told him he had a lease on it, that there was no agreement between he and Dawson Nelson, that Dawson Nelson might have told him that he was going to clear the title, but he didn't remember it. See p. 45 R., that he was in possession of the land at the time that he bought it. See p. 47 R.

An inference could not be drawn from a statement that Kirkland agreed that Dawson Nelson was entitled to the land which as stated was purely a conclusion of Dawson Nelson, that he owned the same, no facts testified to in this conversation between Kirkland and Dawson Nelson, which in any way would have a tendency to show that Dawson Nelson was the owner of the land. It seems that he didn't have the title to the same, but was making an effort to get some sort of papers to the same and besides R. L. Kirkland being in possession of the lands as J. S. Lowry's tenant, he could in no way attorn to Dawson Nelson.

"A tenant can not make a valid attornment to another; nor by a mere acquiescence authorize another to violate the

possession which he holds for his land lord."

Brown vs. French
159 Alabama, 645.

Dawson Nelson states that he had only known the land for about 8 years, See p. 16, R., that at the time that he had the conversation with Mr. R. L. Kirkland, which was in 1936 and which was about 8 years ago, at the time of the filing of the suit, , he states that Mr. Kirkland was turpentineing these lands and that Kirkland was in the possession of the same. He states that he went away to Florida and stayed some several years, and that in 1943, he went down to these lands and as far as he could see, no one was in possession. See page 32, R. He put up a barbed wire fence, one or two strands, round about one acre, and put up trespass signs, see page 32, R. the fence and the signs were torn down, that he went down there about four months before he testified and found that Mr. Adams had been cutting the timber. See page 33, r., that the land was of sandy soil and chiefly valuable for timber, see p. 34, r., that at the time that he had the conversation with Mr. Kirkland that Kirkland had just begun to ^{turpentine} ~~cut~~ the timber and had taken possession of the property at that time, that in answer to the question, see p. 35, R., Que: How long did he proceed to turpentine that timber? Ans: I just said that I moved out of the state, but from the looks of the trees, he must have cupped them for four or five years. Que: Four or five years later - You must have come back? Ans: Yes Sir. Que: You went down to this place and put up some fencing there? Ans: I did.

Que: At that time, Mr. Kirkland had been turpentineing the place for more than three years, had he not? Ans: I imagine that he had. See pages 35-36, R.

Que: When you put up your signs and fences, the cups were still on the trees? Ans: May have been a scattered cup here and there. There was nothing there of any value. See p. 36, R.

To say nothing of the testimony of the respondents to the effect that the Kirklands had been turpentineing and removing the timber from these premises ever since and during the year 1936, the evidence of Dawson Nelson, is conclusive that the Kirklands were in possession of this property for more than three years.

TITLE OR INTEREST:

Necessity. Plaintiff in an equitable or statutory suit to quiet title, remove cloud, cancel a tax deed, and the like, must recover on the strength of his own title rather than the weakness of the tax title, and where he lacks sufficient title or interest, may not maintain the action.

61 C.J. p. 1402.
Long vs. Stanley
30 Southern, 823
Mississippi case.

TITLE OR INTEREST OF CLAIMANT:

Under the general rule that no one will be permitted to contest a tax title without first showing title in himself, in the absence of title sufficient to support the action, one claiming as owner may not bring ejectment against

the holder of the tax title.

61 C. J., 1400.

To defend and generally speaking, the rule is that one attacking the tax title must establish his own title or interest.

61 C. J., 97.

Dawson Nelson introduced in evidence a carbon copy of the purported deed from Lula Calloway, Thomas Calloway, Celia Steiner, H. E. Steiner, Rosana Calloway, Sprina Calloway, Mary Nelson, Emma Steiner, John Steiner, Richard Brandt and Cecil Brandt, to the property involved, he claiming that he had hired the witness, Walker or Covat to secure a deed for him to the aforesaid property.

Walker says that his recollection was that he turned the original deed over to Dawson Nelson or to Covat, but Dawson Nelson says that he didn't get the deed. Whether a sufficient predicate had been laid for the introduction of the copy of the alledged deed, it is a very serious question. It seems that Covat was more or less in charge of the deed, and whether a search had been made among his papers at his home or not, for the original deed, before secondary evidence was offered, but conceded that there was such a deed to O. D. Nelson, and the deed was executed and delivered, there is no evidence whatsoever that the grantors in said deed ever had any title to the aforesaid property, and if they were in the possession of the same, there is no evidence of any color of title that they might have had,

so as to acquire a title by adverse possession, "Adverse possession cannot confer or defeat title to land unless the party setting it up shall show that a deed or other color of title purporting to convey title to him has been duly recorded in the office of the judge of probate of the county in which the land lies for ten years before the commencement of the action.

Title 7, Section 828
Code 1940.

So we now come to the title of Frank Nelson, to a portion of the aforesaid lands. He states that he didn't know the lands so far as the description went, that he owned some lands near the canal, that he didn't remember the section, that he thought he purchased the land in 1897 and claimed to have made a deed to Dawson Nelson. No satisfactory explanation has been made of the deed from Frank Nelson to Dawson Nelson or what its contents were. The witness, Walker says it went the way that the other one went. The fact that the witness states that he made a deed means nothing. So far as the establishment of its contents, if the deed was made and lost, then to establish it by secondary evidence, the evidence should fairly show to the Court the main and essential features of the deed, the description of the property, etc. This was not attempted in the Record. Read it as you will, does not establish by secondary evidence the purported deed that the witness, Frank Nelson speaks about. Nothing was said about the lands being enclosed by a fence and the presumption is that it is open land as no witness has testified about any fence being around the same that he thought that he got a

deed from Pete Hansen who is dead, that he owned the whole tract with the exception of six acres, so far as the Record goes, his statement that Pete Hansen owned the whole tract, is a conclusion of the witness. The deed to Pete Hansen would be the best evidence. There is no evidence of any deed recorded or other papers showing color of title in Pete Hansen or in the witness, Frank Nelson. There is no evidence on the part of the complainant or any where in the Record to show that whether Frank Nelson or Pete Hansen held a legal or equitable title to any part of said lands. The Record discloses that they were squatters and consequently having no title in themselves, they could convey no title on to Dawson Nelson. There is not a deed or any color of title in regard to this land so far as Hansen or the Nelsons are concerned, on record in Baldwin County, Alabama and not having the paper title from the Government on down, that in establishing an adverse possession under color of title as the statute provides for a period of ten years, that it naturally follows that the Nelsons have no title to the property involved and having no title under the law, they have no right to question the tax title held by the respondents.

The complainant introduced in evidence certified copy of assessment of taxes on real estate and personal property in the County of Baldwin, Alabama for the year, 1907, by Andrew Mund, and on examination of the same, it appears that Andrew Mund only assessed a portion of the land in the

NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 11, Tp. 9 S, R. 3 East, which 40 lies immediately south of the property involved in this suit. The Court will observe that the lands of Andrew Mund does not even touch the lands herein involved, the description of the Mund lands being as follows:

Starting at SE corner of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ and running North, 1122 feet, west 1320 feet, South until you bring a row of stakes in line with stakes, thence E to a stake, thence S to boundary line of land belonging to Andrew Muntz, thence E to beginning, Sec. 11, Tp. 9 S. R. 3, E.

We see no relevancy in such certificate of such assessment except that it does show that in 1907 that Andrew Mund was claiming no part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 11, Township 9 S, R. 3 E, which are the lands involved in this suit, so if Andrew Mund didn't own any lands in the SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 11, Tp. 9 S, R. 3 E, of course O. D. Nelson's wife and the other heirs of Mund would not inherit any part of the same. If he did own lands in said last mentioned subdivision, then he certainly didn't assess it and pay the taxes on it in 1907, because the lands he assessed and paid taxes on, lies south of the lands claimed by respondents under their tax deed. The description as given in the Mund assessment would only cover about 35 acres in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 11, Tp. 9, R. 3, and there would be a strip of land of about 5 acres between the Andrew Mund land and the lands herein involved.

ASSESSMENT AND PAYMENT OF TAXES:

The Code of 1896 would cover the mode that the law requires to make a valid assessment for the tax

year of 1907, as the 1907 Code did not go into effect until the first day of April, 1908.

3932 of the Code of 1896 is as follows:

TAXPAYER TO ATTEND APPOINTMENT AND RETURN LIST OF HIS PROPERTY.

It is the duty of every person liable to taxation in each election precinct to attend in person before the assessor, by the first day of the second appointment in the precinct of the taxpayer's residence, and then and there render to the assessor, under oath, a full and complete list of all the property of which he was the owner, or in which he had any interest whatever, or of which he was trustee or agent, on the first day of October of that year.

3941 of the Code of 1896 is as follows:

HOW REAL ESTATE MAY BE DESCRIBED:

The description of real estate may be as follows:

1. If it is an entire section, it may be described by the number of the section, township and range.
2. If it is a subdivision of a section, authorized by the United States for the sale of public lands, it may be described by a designation of such subdivision, with the number of the section, township and range.
3. If it is less or other than such subdivision, it may be described by metes and bounds, or in some way by which it may be known.
4. If it is in a city, town, or village, surveyed and laid off, and a plat thereof is recorded in the office of the judge of probate of the county, and it is a whole lot or block, it

shall be described by the designation of the number thereof; and if it is a part of a whole lot or block, it may be described by metes and bounds, or in some other way, by which it may be known; and it shall not be necessary to insert the quantity of such land in the assessment.

5. If it is a tract of which the subdivision is not known to the assessor, it may be described by metes and bounds, or in some other way by which it may be known or identified.

6. It shall be sufficient to describe lands to be assessed or sold for taxes, by initials, abbreviations and figures.

With the aforesaid requirements as to the assessments of lands for the year 1907, we respectfully submit that the purported assessment as shown by the certified copy to Frank Nelson in which the property was described as follows:

Beginning at a certain stake and running thence in NorthWesterly direction, close to the north side of two oaktrees to the dividing line between Hansen and Miller, thence along said line to its intersection with the line of Abigail Muntz following that line to a stake and from this stake to place of beginning, Section 11, Tp. 9 S, R. 3 E.

is invalid and not in accordance with the requirement of the statute or in other words it was a void assessment. The Court will observe that the beginning point was at a certain stake which would imply probably that there were other stakes somewhere in Section 11 in said township and range, but that the beginning was fixed at this certain stake, wherever it is or was, and no surveyor could locate

the lands, and that said lands were not described as the statute requires. The surveyor, Harry Parker stated frankly, that he couldn't have made the survey, but for the fact that he called in the neighbors, what neighbors, he didn't say, or what information that he received from them, and if he had, it would have been purely hearsay evidence, as to what they informed him as to this certain stake. This certain stake, of course was an artificial monument erected by the hand of man and to determine what monument is intended in such cases for the description is a question of construction dependent on the terms of the entry, patent, or conveyance, its identity being a question of fact determinable by the jury.

9 C. J. 162.

so consequently no surveyor has the right to go out and consult the neighbors as to such a corner and from that make a survey and declare that the survey as made is a correct survey of the property involved. The Court will observe that the lands are not designated as being in the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 11, Township 9, R. 3, that it says begin at a certain stake, that is a particular stake, somewhere in section 11, and consequently the description as contained in said purported assessment is highly ambiguous and uncertain and does not meet the requirements of either of the subdivisions in Section 3941 of the 1896 Code, as an examination of said section will clearly show, that said assessment being a nullity, the State of Alabama was not authorized to collect any tax from Frank Nelson or was he required to pay the same. There must be a valid assessment before

there is a liability for tax, and if the assessment is invalid, the state cannot enforce the collection of the tax.

Driggers vs. Cassidy
71 Alabama, 529.

Smith vs. Cox
22 Southern, 78.

Jones vs. Pelham
4 Southern, 22.

Scot vs. Brown
106 Alabama, 604.

In Jones versus Pelham, the Court said, "The purpose of the statute is that the description in the assessment should be sufficiently definite and certain to inform the owner that his property is assessed for taxation and the purchaser at the tax sale ought to know what property he is buying." In the assessment of the lot in controversy, it is described as a house and lot on Battle Street in the Town of Talladega, as the property of Pelham. The evidence shows that Pelham owned another house and lot on the same street, in which he resided, and adjoining the lot in question. The description affords no data by which to ascertain what house and lot on Battle Street is intended and the assessment is void for uncertainty.

"Rigid adherence to directions and forms of statutes regulating assessment and sale of lands for taxes is required".

Morris vs. Card
223 Alabama, 254.

Harry Parker, (See page 10 of the Record), stated that he could not make a survey from the description contained in the assessment alone, that he could not do this without calling the neighbors in. The starting point in the description in the purported assessment by Frank Nelson is a certain stake, that is a particular stake. Probably if it had been mentioned that beginning at a stake, that would have been more definite than a particular stake, evidently there must have been other stakes for in the preparation of the description for the assessment, the word certain would not have been used in designating the stake where the boundary line was to begin.

"The general rule is said to be that a stake is not sufficiently definite to be considered a beginning corner, but this rule obtains only in cases where there is no date presented in the description from which the true location of the stake can be determined."

9 C. J. 162.

Where is any data included in the description in the assessment which by any reason or logic from which could be established, the true location of that certain stake mentioned, therein.

Complainant also introduced for what reason we have been unable to figure out an assessment of taxes on real and personal property for the year 1907, by the estate of W. Steiner. To start with, property is invalidly assessed in the name of an estate, the evidence shows no connection between W. Steiner's land and the land involved in this suit.

There is no evidence as to where H. Steiner's land was, there is no evidence as to where John Plash's land was, there is no evidence as to where Mrs. Miller's land was, or what Mrs. Miller was referred to. The evidence certainly does not show that any of this land was in subdivision, which ~~was~~ is in litigation.

We most respectfully contend that in the first place that it hasn't been shown that O. D. Nelson or those under whom he claims had title to the land by deed or adverse possession and has the right to institute this proceeding for the reason that he has no title to the same, either by adverse possession or title from the government. In the second place, the tax assessment of Frank Nelson is a nullity, because the lands were not described with that sufficiency as required by law and that the injunction should be dissolved in this case and the cause dismissed.

Respectfully submitted,

Albert Thomas
Ch. H. Hylton
 SOLICITOR FOR RESPONDENTS

Dated this 22nd day of February, 1945.

I hereby certify that I have forwarded a copy of this Brief and Argument to Messrs Beebe & Hall, of Bay Minette, Alabama.

postage prepaid:

Ch Hylton

1063

STATE OF ALABAMA
BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING;

WE COMMAND YOU, that you summon S. M. ADAMS, JR., KIRKLAND TURPENTINE COMPANY, MRS. JOSEPHINE KIRKLAND, ROGER LEE KIRKLAND, ROBERT OTHO KIRKLAND and LUTHER JOSEPH KIRKLAND, to appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery Jurisdiction, within thirty days after the service of summons, and there to answer, plead or demur, without oath, to a bill of complaint lately exhibited by O. D. NELSON against said above named, and further to do and perform what the said Judge shall order and direct in that behalf. And that the Respondents 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 21 day of February, 1944.

R. S. Duck
Register.

O. D. NELSON,

COMPLAINANT

VS

S. M. ADAMS, JR., KIRKLAND
TURPENTINE COMPANY, MRS. JOSEPHINE
KIRKLAND, ROGER LEE KIRKLAND, ROBERT
OTHO KIRKLAND and LUTHER JOSEPH
KIRKLAND

RESPONDENTS

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

And now comes the Complainant, and presents this, his bill of complaint, against the Respondents, S. M. Adams, Kirkland Turpentine Company, Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland, and respectfully represents and shows unto your Honor and this Honorable Court as follows:

1.

That your Complainant is a bona fide resident of Baldwin County, Alabama, and over twenty one years of age; that the Respondent S. M. Adams, Jr., is over twenty one years of age and a resident of Mobile County, Alabama; that Josephine Kirkland and Roger Lee Kirkland are over twenty one years of age and bona fide residents of Baldwin County, Alabama; that the Kirkland Turpentine Company is a partnership composed of Roger Lee Kiekland, Robert Otho Kirkland, and Luther Joseph Kirkland, all living at Foley, in Baldwin County, Alabama, and that Robert Otho Kirkland and Luther Joseph Kirkland are minors over fourteen years of age, living with their mother, Mrs. Josephine Kirkland.

2.

That your Complainant is the owner in fee simple of the following described lands in Baldwin County, Alabama, to-wit:

The Southwest Quarter of the Northwest Quarter of Section 11, Township 9 South Range 3 East.

3.

That the Respondent, S. M. Adams, Jr., has, without the consent of the Complainant, committed trespass upon the said lands by going thereon and cutting down the growing timber; that the Complainant is advised that the Respondent S. M. Adams, Jr., enters on the said lands under and by authority vested in him by a contract entered into by Kirkland Turpentine Company, by Josephine Kirkland.

4.

That the said S. M. Adams Jr., will continue to trespass upon the said lands and cause irreparable damage thereto unless enjoined, that the said S. M. Adams has already cut and/or removed timber from the said lands, the exact amount of which the Complainant is not advised.

WHEREFORE, the premises considered, your Complainant prays that your Honor will, by proper process make the said S. M. Adams, Jr., Kirkland Turpentine Company, Mrs. Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland parties respondent to this Bill of complaint, requiring them 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.

That your Honor will order a reference to determine the amount of damage suffered by the Complainant by virtue of the Respondents trespassing upon and cutting timber from said lands;

That your Honor will grant an injunction restraining the Respondents, S. M. Adams, Jr., Kirkland Turpentine Company, Mrs. Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland and each of them, or their agents, servants or employees, from trespassing or entering upon the said lands, either directly or indirectly;

That your Honor will give and grant unto your Complainant such other, further, different or general relief as he may be in equity and good conscience entitled

to receive and as in duty bound he will ever pray.

O. D. Nelson
Complainant

BREEBE & HALL

By Shulace
Solicitors for Complainant.

STATE OF ALABAMA

BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared O. D. Nelson, who is known to me and who, having been by me first duly sworn, deposes and says that he has read the foregoing bill of complaint and that he is familiar with the contents thereof, and that the same are true.

O. D. Nelson

Sworn to and subscribed before me on this the 21st day of February, 1944.

Shulace
Notary Public, Baldwin County, Alabama.

TO HONORABLE R. S. DUCK, REGISTER CIRCUIT COURT, BALDWIN COUNTY, IN EQUITY;

WHEREAS, O. D. NELSON has this day filed his bill of complaint in this Court against S. M. ADAMS, JR., KIRKLAND TURPENTINE COMPANY, MRS. JOSEPHINE KIRKLAND, ROGER LEE KIRKLAND, ROBERT OTHO KIRKLAND AND LUTHER JOSEPH KIRKLAND,

AND, WHEREAS, on said Bill of Complaint being exhibited to the Honorable F. W. HARE, Judge of the Circuit Court of Baldwin County, Alabama, on the 21st day of February, 1944, he did order that upon Complainant's entering into bond with surety, in the sum of \$ 250⁰⁰ and approved by the Register of this Court, payable to and conditioned according to law, a writ of ^{temporary} injunction issue out of said Court according to the prayer of the said Bill.

Dated at Monroeville, Alabama, on this the 21st day of February, 1944.

F. W. Hare
Circuit Judge

O. D. NELSON,
Complainant,
VS.
S. M. ADAMS, JR., ET AL.
Respondents.

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

This cause is submitted for decree upon motion of the Respondents to dissolve the temporary injunction heretofore issued. Respondents claim title under sale for taxes for the year 1907. It is the contention of the complainant that the tax sale under which Respondents claim title was void for reason that the land, to-wit: Southwest Quarter of Northwest Quarter, Section 11, Township 9 South, Range 3 East, Baldwin County, Alabama, had been regularly assessed for taxation for the year 1907. The witness, Parker, a land surveyor, testified that from the assessment made for the year 1907 a surveyor could locate the lands as they were assessed with the aid of oral testimony from people living near the land. He further testified that he did so locate the land and introduced in evidence a plat purporting to be a plat of the land in question. However, I am persuaded that the land actually assessed for the year 1907 is situated in the Northwest Quarter of the Southwest Quarter, Section 11, Township 9 South, Range 3 East, and not in the Southwest Quarter of Northwest Quarter of said Section. In fact, this affirmatively appears from the surveyor's plat introduced in evidence. Since the land assessed for the year 1907 is no part of the land in controversy, it follows that the assessment relied upon by the complainant for the year 1907 was not a valid assessment. Granting that the three parties making the assessment for that year owned separate tracts in the

Southwest Quarter of Northwest Quarter, Section 11, Township 9 South, Range 3 East, the assessments as actually made for that year fails to place the land assessed in the forty described in the bill of complaint. The Complainant does not contend that the sale to the respondents' grantors was void for any other reason than that the land had been regularly assessed and the taxes paid, and it follows that the complainant is not entitled to relief, and the Register will enroll the following decree:

D E C R E E:

This cause coming on to be heard is submitted on motion of Respondents to dissolve the injunction issued on the 22nd day of February, 1944, and upon consideration, I am of the opinion that the motion should be granted.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that said temporary injunction be and the same hereby is dissolved.

This 20th day of August, 1945.

F. W. Hare
JUDGE

1043

James Mackay
Inverness

James Mackay
Inverness
17th July 1941

James Mackay

STATE OF ALABAMA

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS that we, O. D. NELSON as principal and the undersigned as sureties, are held and firmly bound unto the Register of the Circuit Court, in Equity, of the said County, in the sum of \$500.00 for the payment of which, to the said Register, or his successors, we bind ourselves, our successors and administrators, jointly and severally.

Sealed with our seals and dated the 18 day of April, 1944.

WHEREAS, the said O. D. NELSON has filed his Bill of Complaint in the said Circuit Court, in Equity, and has obtained thereon an order for the issuance of an injunction from the Honorable F. W. Hare, Judge, to restrain and enjoin S. M. ADAMS, JR., KIRKLAND TURPENTINE COMPANY, MRS. JOSEPHINE KIRKLAND, ROGER LEE KIRKLAND, ROBERT OTHO KIRKLAND, AND LUTHER JOSEPH KIRKLAND from trespassing, or entering upon the said lands, either directly or indirectly.

Now, therefore, the condition of the above obligation is such that if the said O. D. Nelson, his heirs, successors, administrators, or any of them, shall pay or cause to be paid all damages which any person may sustain by the issuing out of said injunction if the same is dissolved by the Circuit Court, in Equity, on the bill filed by the said O. D. Nelson as aforesaid, then this obligation to be void, otherwise to remain in full force and effect.

O. D. Nelson (SEAL)
M. C. Mason (SEAL)
Harvey H. Parker (SEAL)
H. W. Graham

Taken and approved this the
17th day of April, 1944.

Register
Register.

O. D. NELSON, COMPLAINANT

VS

S. M. ADAMS, JR., ET AL
RESPONDENTS

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

And now comes the Complainant, and amends his bill of complaint heretofore filed in this cause so that the same shall read as follows:

1.

That your Complainant is a bona fide resident of Baldwin County, Alabama, and over twenty one years of age; that the Respondents S. M. Adams, Jr., Josephine Kirkland and Roger Lee Kirkland are over twenty one years of age and bona fide residents of Baldwin County, Alabama; that the Kirkland Turpentine Company is a partnership composed of Roger Lee Kirkland, Robert Otho Kirkland and Luther Joseph Kirkland, all living at Foley, in Baldwin County, Alabama; that Robert Otho Kirkland and Luther Joseph Kirkland are minors over fourteen years of age, living with their mother, Mrs. Josephine Kirkland.

2.

That your Complainant is the owner of the following described lands, situated in Baldwin County, Alabama, to-wit:

Southwest Quarter of the Northwest Quarter of Section Eleven,
Township Nine South Range Three East.

3.

That the Respondent S. M. Adams, Jr., has, without the consent of the Complainant, committed trespass upon the said lands by going thereon and cutting down the growing timber; that the Complainant is advised that the Respondent S. M. Adams Jr., enters upon the said land under and by authority of a contract entered into with Kirkland Turpentine Company.

4.

That the Complainant is advised that the Respondents Kirkland Turpentine Company, Mrs. Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland and Luther Joseph Kirkland, have a claim to said property arising out of a

in the event it is found that the Respondents have a claim on said lands for the

taxes paid thereon, that your Honor will order a reference to determine the amount of such taxes, which the Complainant is ready, willing, and able to pay.

That your Honor will also order a reference to fix and determine the amount owed by the Respondents, Kirkland Turpentine Company, Mrs. Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland, as damages for turpentineing the timber of the Complainant and further to ascertain and determine the amount of damages suffered by the Complainant by virtue of the Respondents trespassing upon and cutting timber from the said lands;

That your Honor will grant an injunction restraining the Respondents, S. M. Adams, Jr., Kirkland Turpentine Company, Mrs. Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland, and each of them, and their agents, servants or employees, from trespassing or entering upon the said lands, either directly or indirectly;

That in the event that your Complainant is mistaken in the relief prayed for, then he prays that your Honor will give and grant unto him such relief as he may be entitled to in the premises; and that your Honor will give and grant unto him such other, further, different and general relief as he may be in equity and good conscience entitled to receive, and as in duty bound he will ever pray.

O. D. Nelson
Complainant

BEEBE & HALL

BY [Signature]
Solicitors for Complainant.

STATE OF ALABAMA
BALDWIN COUNTY.

Before me, the undersigned authority in and for said State and County, personally appeared O. D. Nelson, who is known to me, and who, having been by me first duly sworn, deposes and says he has read the foregoing amended bill of complaint, and that he is familiar with the contents thereof, and that the same are true.

[Signature]
[Signature]

Subscribed and sworn to before me on this the 8th day of June, 1944.

[Signature]
Notary Public, Baldwin County, Alabama

O. D. NELSON,
Complainant,
Vs.

S. M. ADAMS, JR. ET AL,
Respondents.

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

Now come the Respondents in the aforesaid cause and move the Court to increase the amount of the injunction bond in this cause as fixed by the Court on February 21, 1944, at Two Hundred Fifty Dollars (\$250.00) and in support of said Motion shows unto the Court that there is now located and situated on said lands at least seventy-five (75) cords of paper wood of the value of Eight and 75/100 Dollars (\$8.75) a cord that has been cut by S. M. Adams, Jr. one of the aforesaid Respondents; and that pending this suit said wood is liable to be damaged to such an extent that it will become worthless by the bugs getting into it and natural decay of this wood by being left exposed on the lands from which it has been cut by the said S. M. Adams Jr.; that in addition to this the said S. M. Adams Jr. has been caused to move his machinery and equipment from the lands involved in this suit and loss of time at an expense of around One Hundred Dollars.

Robert A. Carson
Solicitors for Respondents.

The foregoing motion is ordered set for hearing in Bay Minette, Ala. on Monday, the 10th day of April, 1944, at 1:30 P.M. The Register is directed to give the Complainant, or his Solicitor of record, ten days notice of said hearing.

This 22nd day of March, 1944

J. W. Ware
Judge

Assessment of Taxes on Real Estate and Personal Property in the
County of Baldwin, Alabama, for year 1907.

Shell banks--Beat No. 11,
Name of Parties Assessed--Frank Nelson,
No. of Assessment--55,
Assessors Fee \$-----,
Description: Beginning at a certain stake and running thence in
Northwesterly direction close to the N. side of two
oak trees to the dividing line between Hanson and
Miller, thence along said line to its intersection
with the line of Abigail Muntz, following that line
to a stake and from this stake to place of beginn-
ing, Section 11, Tp 9 S, R 3 E--Impts \$50.00.

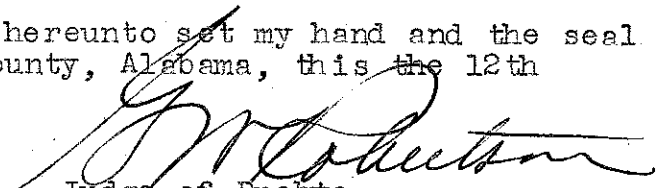
No. acres Improved,--5,
No. acres Unimproved--15,
Total No. Acres,--20,
Total assessed value of land & Impts,--\$100.00,
Household & Kitchen Furniture, Value of \$30.00,
Cattle,-No.3 head, Value \$24.00; 3 Hogs, value \$3.00,
Steamboats, etc., \$600.00,
Clocks, etc.--\$2.00; Guns 1, \$8.00,
Wagons, etc.-----,
Guns, etc.-----,
Cattle,-----,
Horses 1; Value \$25.00,
All other Property Real & Personal not otherwise Specified \$10.00,
Total value Personal Property,\$645.00,
Total Value Real & Personal Property,\$745.00
State Tax on Real & Personal Property, \$1.86²⁵
Special State Soldier Tax, \$.74⁵⁰
Special State School Tax, \$ 2.23⁵⁰
County Tax on Real & Personal Property, \$2.23⁵⁰
Special County Bridge Tax, \$.37²⁵
Special County School Tax, \$2.23⁵⁰
Special County Road Tax, \$.74⁵⁰
Total State & County Tax of Real & Personal Property \$11.17⁵⁰
Building Fund, \$.74⁵⁰

THE STATE OF ALABAMA, }
COUNTY OF BALDWIN. } PROBATE COURT.

I, G.W.Robertson, Judge of the Probate Court and Custodian of
the Records and Files thereof, in and for said State and County,
do hereby certify, that the above and foregoing is a true, correct
and complete copy of an Assessment for Taxation, made in the name of
-----FRANK NELSON-----for the tax year 1907, as the same appears
of record in said Court.

I, further certify that the word "PAID" appears in writing on
the margin of the record of said Assessment.

In Testimony Whereof, I have hereunto set my hand and the seal
of the Probate Court of Baldwin County, Alabama, this the 12th
day of June, A.D., 1944.


Judge of Probate.

STATE OF ALABAMA

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS that we, O. D. NELSON as principal and the undersigned as sureties, are held and firmly bound unto the Register of the Circuit Court, in Equity, of the said County, in the sum of \$ 250⁰⁰ for the payment of which, to the said Register, or his successors, we bind ourselves, our successors and administrators, jointly and severally.

Sealed with our seals and dated the 22 day of February, 1944.

WHEREAS, the said O. D. NELSON has filed his Bill of Complaint in the said Circuit Court, in Equity, and has obtained thereon an order for the issuance of an injunction from the Honorable F. W. Hare, Judge, to restrain and enjoin S. M. ADAMS, JR., KIRKLAND TURPENTINE COMPANY, MRS. JOSEPHINE KIRKLAND, ROGER LEE KIRKLAND, ROBERT OTHO KIRKLAND, and LUTHER JOSEPH KIRKLAND, from trespassing or entering upon the said lands, either directly or indirectly.

Now, therefore, the condition of the above obligation is such that if the said O. D. Nelson, his heirs, successors, administrators, or any of them, shall pay or cause to be paid all damages which any person may sustain by the issuing out of said injunction if the same is dissolved by the Circuit Court in Equity, on the bill filed by the said O. D. Nelson as aforesaid, then this obligation to be void, otherwise to remain in full force and effect.

O. D. Nelson (SEAL)
F. W. Hare (SEAL)
Henry H. Parker (SEAL)

Taken and approved this the

23rd day of February,

1944.

R. L. Luck
Register.

O. D. NELSON,

Complainant,

VS.

S. M. ADAMS, JR., KIRKLAND
TURPENTINE COMPANY, MRS.
JOSEPHINE KIRKLAND, ROGER LEE
KIRKLAND, ROBERT OTHO KIRKLAND,
AND LUTHER JOSEPH KIRKLAND,

Respondents.

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

Now come the Respondents and for answer to the Bill
of Complaint in this cause say:-

FIRST:

That Respondents admit the first paragraph of the Bill
of Complaint with the exception as to the residence of S. M.
Adams Jr., and state the facts to be that he is a resident of
Baldwin County, Alabama, and not of Mobile County, Alabama.

SECOND:

Respondents deny most emphatically that the Complain-
ant is the owner in fee simple of the following described lands
in Baldwin County, Alabama, to-wit:- Southwest Quarter of North-
west Quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section Eleven (11), Township Nine
(9) South, Range Three (3) East, and state the facts to be
that Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland,
and Luther Joseph Kirkland are the owners of said land and are
in the open, notorious and exclusive possession of said lands,
and that the said Respondent, S. M. Adams Jr. has a timber con-
tract or lease with them in which he is authorized to cut and
remove said timber from said lands. Respondents further show in
support of their said title to said lands that said lands were
sold by the Tax Collector of Baldwin County, Alabama, on-to-wit,
the 26th day of October, 1908, in front of the Courthouse door
of said County for taxes due the State of Alabama and Baldwin
County for the year 1907, said lands being assessed to W. A. Reed
#1; that at said sale W. M. Cannon became the purchaser of said
lands and that said lands not being redeemed, on-to-wit, the 15th
day of July, 1911, in accordance with the laws in such cases,
J. H. H. Smith, Judge of Probate of Baldwin County, Alabama,

executed a Tax Deed to the said W. M. Cannon conveying said lands to him, a copy of said deed is hereto attached, Marked Exhibit A to this Answer and is made a part of the same. The Respondents further show that on to-wit, the 6th day of September, 1935, that the said W. M. Cannon and his wife Isbelle Cannon, sold and conveyed the aforesaid lands to J. S. Lowrey. A copy of said deed is hereto attached marked Exhibit B, and is made a part of this Answer. Respondents further show that on to-wit, the 23rd day of January, 1937, J. S. Lowrey, a single man, sold and conveyed said land to R. L. Kirkland. A copy of said deed is hereto attached marked Exhibit C and is made a part of this Answer. That each of the foregoing deeds were duly recorded in the Probate Office of Baldwin County, Alabama; the date of their recording appears upon the respective Exhibits heretofore mentioned.

REspondents further show that on to-wit, the 23rd day of January, 1937, that being the day that the said R. L. Kirkland acquired title to said land, the said R. L. Kirkland went into the open, notorious, exclusive and adverse possession of said lands, turpentineing the timber on said land and using it in every way that it was susceptible of; that the said R. L. Kirkland continued in such possession until he sold said lands to Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland, which sale was made by the said R. L. Kirkland on to-wit, the 11th day of August, 1938. A copy of said deed together with where recorded in the Probate Office of Baldwin County, Alabama, is hereto attached marked Exhibit D to this Answer and is made a part of the same. That immediately upon the conveyance by the said R. L. Kirkland to them the said Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland and Luther Joseph Kirkland went into the open, notorious and exclusive possession of said lands, claiming to own the same, turpentineing the same, cutting the timber from the same, and using the lands in every way that they were susceptible of, and are still in possession of said lands exercising said acts of ownership over the same, and that to say the least their said possession under said Tax Deed

from J. H. H. Smith, Probate Judge of Baldwin County, Alabama, to their predecessor in title has been more than three years prior to the filing of the Bill of Complaint in this cause. And the said Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland and Luther Joseph Kirkland plead in defense of this cause of action the Statute of Limitations of three years as fixed by the Statutes of Alabama, and by reason of said Statute of Limitations they have, if for no other reason, acquired the title to said property.

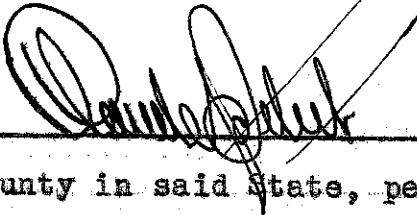
That ever since the said Kirkland acquired said property and went into the aforesaid possession of the same and up to the present time, they have assessed said property in their respective names and have paid the taxes on the same, and that during this period of time the said Complainant has never assessed or paid the taxes on the same and Respondents are not advised as to any assessment or any payment of taxes on said property by the said Complaint; that on the 23rd day of October, 1943 the Kirkland Turpentine Company, by Josephine Kirkland, entered into a timber contract sale with S. M. Adams Jr. selling and conveying all the timber on the aforesaid lands. That under said contract the said S. M. Adams Jr. immediately went upon said lands and began to cut and remove the timber therefrom and continued to do so up until the time he was enjoined by this court from cutting and removing said timber from said lands. A copy of said contract with the said S. M. Adams Jr. is hereto attached marked Exhibit E and is made a part of this Answer.

The Respondents are of the opinion that they have fully answered all of the averments contained in said Bill of Complaint, but in case they have not they most emphatically deny the same as being untrue and incorrect and in full answer to the Bill of Complaint the Respondents ask that they be discharged with their reasonable costs.


Solicitors for Respondents.

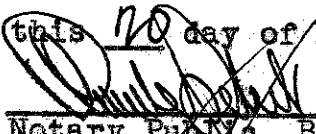
STATE OF ALABAMA,

BALDWIN COUNTY.

Before me, , a Notary Public, in and for said County in said State, personally appeared Mrs. Josephine Kirkland and S. M. Adams Jr., both of whom are known to me, and who being by me first duly and legally sworn, depose and say that the answers contained in the foregoing Answer are true and correct.

Josephine Kirkland
S. M. Adams Jr.

Sworn to and subscribed
 before me, a Notary Public,
 whose seal is hereto affixed
 this 20 day of May, 1944.


 Notary Public, Baldwin County,
 Alabama.

My Commission Expires Sept. 10, 1947

EXHIBIT A.

STATE OF ALABAMA, |
BALDWIN COUNTY. |

Know all men by these presents that Whereas, the land hereinafter described was subject to taxation for the year 1907 and the Board of Revenue levied taxes thereon for county purposes for said year; and

Whereas, Said land was returned for taxation by W.A.Reed #1 for said year 1907; and

Whereas, The certificate of assessments was made in accordance with Section 2156 of the Code; and

Whereas, the Tax Collector entered in the Docket of Tax Causes the description of said land and amount of taxes, fees, and charges due thereon for said year and delivered said Docket to the Probate Judge, and reported, in accordance with Section 2268 of the Code, that he was unable to collect said taxes without sale of said land; and

Whereas, The Probate Court at the July, 1908 Term, rendered decree ordering sale of said land for the payment of said taxes, fees, charges, costs and expenses of sale; and

Whereas, the Tax Collector in enforcement of said decree, gave thirty days notice by publication once a week for three successive weeks in the Baldwin Times, a newspaper regularly published in said County, and also by posting notice at the Court House of said County and at a public place in the precinct in which the land was situated, that he would sell said land on the 26th day of October, 1908, between 10 o'clock A.M. and 4 o'clock P.M., in front of said Court House, which notices described said land and stated the amount for which the Probate Court's Decree had been rendered against same and that said taxes had been assessed to W.A.Reed #1; and

Whereas, The Tax Collector at said time, in front of said Court House door, did offer said land at public outcry, so that, as far as practicable, only such portion thereof was sold as was necessary to satisfy said decree and did sell said land to W.M. Cannon, who was the highest bidder for \$92.33, which covered the taxes, fees, charges, costs and expenses of sale, which amount he paid to said Tax Collector; and

Whereas, The Tax Collector did then deliver to said purchaser, in accordance with Section 2285 of the Code, a certificate of purchase, containing description of said land, showing the date the same had been assessed to W.A.Reed #1 for said year, and also showing the taxes due thereon, distinguishing the amounts due the State and County and for school purposes and the fees and costs, and further showing the time for which said land was advertised, the date it was offered for sale, the name of the purchaser and the price paid; and

Whereas, The time for redemption of said land has elapsed and said certificate or purchase has been returned to the Probate Judge by W.M.Cannon, the purchaser:

Now, Therefore, I, J.H.H.Smith, as Probate Judge in and for said County in said State, under and by virtue of the provisions of Section 2296 of the Code of Alabama of 1907 and in consideration of One Dollar, to me paid, have this day granted, bargained and sold and by these presents do grant, bargain, sell and convey unto W.M.Cannon, all the right, title and interest of said W.A. Reed #1 and all the right, title, interest and claim of the said State and County on account of said taxes or under said decree, in and to the following described land, to-wit:-

W $\frac{1}{2}$ of NE $\frac{1}{4}$ Sec. 12, T8S, R4E; NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 3, T3N, R4E; N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ & N $\frac{1}{2}$ of NE $\frac{1}{4}$, Sec. 4, T8S, R3E; N $\frac{1}{2}$ of NW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, S $\frac{1}{2}$ of SE $\frac{1}{4}$, Sec. 11, T9S, R3E; S $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 11, T9S, R3E; NW $\frac{1}{4}$ of NW $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 3, T8S, R3E; NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 1, T5S, R3E; SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 11, T3N, R4E, situated in said county and State; To have and to hold the same, the said right, title and interest unto said W.M.Cannon, heirs, assigns or successors, forever, but no right, title or interest of any reversioner or remainderman in said land is conveyed hereby.

In Testimony Whereof, I have hereunto set my hand and seal
this 15th day of July, 1911.

(Seal)

J.H.H.SMITH,
Judge of Probate, Baldwin
County.

STATE OF ALABAMA, |
BALDWIN COUNTY. |

I, Thomas W. Richerson, Clerk of the Circuit Court in and for
said county in said State, hereby certify that J.H.H.Smith, whose
name is signed to the foregoing conveyance as Judge of Probate
and who is known to me, acknowledged before me on this day that
being informed of the contents of this conveyance, he executed
the same voluntarily on the day the same bears date.

Given under my hand this the 15th day of July, 1911.

T.W.RICHERSON,
Clerk of the Circuit Court,
Baldwin County, Alabama.

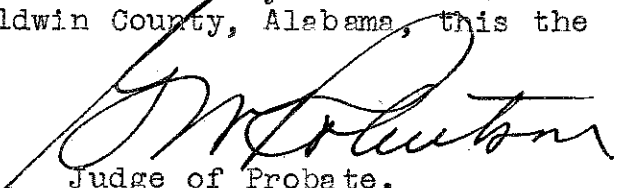
Filed for record July 15th, 1911,
Recorded July 18th, 1911.

J.H.H.Smith, Judge of Probate,---B

THE STATE OF ALABAMA, | SS
BALDWIN COUNTY. |

I, G.W.Robertson, Judge of the Probate Court and Custodian of
the Records and Files of the same, in and for said Baldwin County,
State of Alabama, do hereby certify that the above and foregoing
is a true, correct and complete copy of an instrument of writing
as the same appears of record in Deed Record 18 N.S. at pages
159 and 160, now on file in the office of Judge of Probate of
Baldwin County, Alabama.

In Witness Whereof, I have hereunto set my hand and the
seal of the Probate Court of Baldwin County, Alabama, this the
22nd day of March, A.D., 1944.


Judge of Probate.

O. D. NELSON,
Complainant,

VS.

S. M. ADAMS JR., KIRKLAND
TURPENTINE COMPANY, MRS. JOSEPHINE
KIRKLAND, ROGER LEE KIRKLAND, ROBERT
OTHO KIRKLAND AND LUTHER JOSEPH
KIRKLAND,
Respondents.

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

TO MESSRS. BEEBE & HALL, SOLICITORS FOR THE COMPLAINANT IN THE
AFORESAID CAUSE:

You will take notice that on the 13 day of June,
1944, the Respondents in the aforesaid cause will move the Circuit
Judge of the Twenty-first Judicial Circuit of Alabama to dissolve
the temporary Injunction, heretofore issued in said cause at your
request, enjoining said Respondents from trespassing upon and
cutting and removing the timber from the lands described in
Complainant's Bill of Complaint.

DATED this 25th day of May, 1944.


Solicitors for Respondents.

O. D. NELSON,

Complainant,

vs.

S. M. ADAMS, JR., ET AL,

Respondents.

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

TO O. D. NELSON OR BEEBE & HALL, HIS SOLICITORS OF RECORD:-

You are hereby notified that the Respondents in the above styled cause have filed their Motion to Increase the Amount of the Injunction Bond in this cause as fixed by the Court on February 21, 1944, and that F. W. Hare, Judge of said Court, has set such Motion down for hearing in Bay Minette, Alabama, on Monday the 10th day of April, 1944, at 1:30 o'clock P. M.

WITNESS my hand as Register of said Court on this the 24th day of March, 1944.


Register.

O. D. NELSON

COMPLAINANT

VS

S. M. ADAMS? ET AL

RESPONDENT

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

Now comes the Respondents in the aforesaid cause and moves the court to dissolve the temporary injunction heretofore issued by this court and as grounds for this motion says:

FIRST:

That the bill of complaint does not contain equity.

SECOND:

On the Sworn answer of the Respondents denying the allegation of the Bill of Complaint.

THIRD:

That the Respondents have been in the open, notorious and exclusive possession of said lands for three years prior to the filing of said bill of complaint in this cause.


Solicitors for Respondents.

O. D. NELSON

COMPLAINANT

VS

S. M. ADAMS,

ET ALS.

MOTION DISSOLVING INJUNCTION

I hereby accept
service of a copy
of within notice
this 24th day of
March 1944
Rubeysnap
by Willard
Solicitor for Army.

NOTICE.

O. D. NELSON,
Complainant,

VS.

S. M. ADAMS JR., ET AL,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

ISSUED MARCH 24, 1944.

Willard

Register.

1065

NOTICE.

Executed 5/25 1944
by serving ~~subpoena~~ notice

on H. M. Nace

W. R. Bryant Sheriff
By B. F. Kucera Deputy Sheriff

O. D. NELSON,
Complainant,
VS.

S. M. ADAMS JR., KIRKLAND
TURPENTINE COMPANY, MRS.
JOSEPHINE KIRKLAND, ROGER
LEE KIRKLAND, ROBERT OTHO
KIRKLAND, AND LUTHER JOSEPH
KIRKLAND,

Respondents.

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

FILED MAY 26th, 1944.
[Signature]
Register.

1.

The Court in its decree of August 20, 1945, dissolved the temporary injunction heretofore issued in this cause.

We do not care to discuss the case at any great length, but to call the attention of the Court to certain laws, and facts as brought out at the hearing in support of our contention, that the sale under which the Respondents hold was void, and that they therefore had no right to enter upon the land and cut and remove the timber therefrom.

There is only one question that we wish to discuss: **WAS THE SALE VOID.**

We wish to call, first, the attention of the Court to the following principles of law:

1. Testimony of a Notary that a deed was acknowledged, signed, and delivered in his presence, and as to the contents thereof, held sufficient to establish the execution thereof, the deed having since been lost.

Loyd vs. Christian
94 Sou. 279; 208 Ala. 322

2. Uncertainty of description does not void instrument, if land may be identified by grantors ownership and possession of any parcel answering description and by placing purchaser in possession of parcel intended.

Carter vs. East
125 Sou. 655; 220 Ala. 511

3. Description of land in deed, if not certain in itself, was sufficient where capable of being made certain by parole proof.

2.

Holly vs. Dinkins
80 Sou. 861; 202 Ala. 477

4. Even the failure of a deed to state the County in which the land is situated does not render it void for uncertainty.

Hawkins vs. Hudson
45 Ala. 482

5. Where realty was assessed to two tax payers, the payment of the tax payers wholly discharge the lien that the state and county had upon the realty and a subsequent tax ^{Sale} ~~payer~~ and deed executed to tax purchaser were void.

Laney vs. Proctor
182 Sout. 37

Pickler vs. State
42 Sou. 1018

6. Parole evidence offered in nature of explanation of description in assessment of lot for taxes or applying it to its intended object~~ion~~ was admissible.

Morris vs. Waldroup
105 Sou. 172

The carbon copy of deed from Lula Calloway, et al, to O. D. Nelson, dated October 5, 1936, and conveying the Southwest quarter of the Northwest quarter of Section 11, Township 9 South, Range 3 East, Baldwin County, Alabama, and which was definitely identified ^{by} the party securing the same, is admissible and sufficiently confers title upon the Complainant to authorize him to maintain this suit. (See testimony of Frank Walker, pages 20, et seq. of transcript); (also your letter of August 18, 1945, first

page, 3rd paragraph).

The testimony of Frank Nelson definitely establishes the fact that in 1897 he purchased 20 acres of land in Section 11, Township 9 South, Range 3 East; that he moved thereon, built him a home and occupied the same until sometime about 1933. This, uncontradicted^{ly} sufficiently to establish the title of Mr. Frank Nelson through whom the Complainant holds. Then too, it is our construction of the law that if the taxes are paid upon a parcel of land, regardless of whether it be by the owner, or by someone else, discharges the lien that the State and County may have against the property for taxes thereon, and that a sale of the land in the name of some other party and a deed executed thereunder are void. (Laney vs. Proctor, supra).

If Mr. Frank Nelson assessed and paid the taxes on a part of the tract in question for the year for which it was sold, then the ~~balance~~^{sale} of the entire tract in the name of W. A. Read was void. (See statement of the Court, pages 12-13 of the transcript).

There was offered in evidence certified copy of tax assessment, marked paid, in the name of Frank Nelson, for the year 1907. The Respondents do not contest the question that Frank Nelson for the year 1907, actually assessed and paid taxes upon 20 acres of land in Section 11, Township 9 South, Range 3 East, in Baldwin County, Alabama. Is the entire testimony in the case sufficient to identify the 20 acres assessed by Frank Nelson as being a part of the Southwest quarter of Northwest quarter of Section 11, Township 9 South, Range 3 East.

The testimony of Frank Nelson is that in 1897 he purchased 20 acres

of land in Section 11, Township 9 South, Range 3 East, in Baldwin County, Alabama; that he went thereon, built improvements thereon and cleared and cultivated a part thereof. That he owned, at no time any other land in or near said Section, Township and Range. If we take his testimony in connection with that of Mr. Harry H. Parker, the surveyor, then we find that the 20 acres occupied by Mr. Nelson was actually a part of the Southwest quarter of Northwest quarter of Section 11, Township 9 South, Range 3 East. If Mr. Nelson went before the proper authorities and assessed his land, although the exact government subdivision is not given, when we take it in connection with the testimony of the surveyor, and keeping in mind the legal axiom quod certum est quod certum redendi est, we must necessarily arrive at conclusion that Mr. Nelson actually assessed and paid taxes on 20 acres of the Southwest quarter of Northwest quarter of Section 11, Township 9 South, Range 3 East.

The Court in its decree refers to a surveyor's plat. While we are unable to find the plat referred to in the file, it is our impression that it was only a pencil sketch made by Mr. Parker, of the tract of land under question, showing the relative location of the three parcels assessed by Nelson, Mund and Steiner, making up the 40 acres.

We therefore submit to the Court that when we take into consideration all the testimony in the case, it conclusively shows that Frank Nelson actually assessed and paid the taxes on 20 acres of the Southwest quarter of Northwest quarter of Section 11, Township 9 South, Range 3 East. This being the case, the ~~balance~~ ^{Sale} in the name of W. A. Read was void, and that therefore the sale under which the Respondents hold being void they have no right to

5.

exercise rights of possession over the said land. There has been no effort on the part of the Respondents to establish adverse possession for a period of 10 years or more.

The Court will probably remember the agreement made in Court between the parties, that the Respondents could go ahead and remove any wood or timber from the land with the understanding ^{and} that the funds therefrom would be controlled by the final decree of the Court.

We therefore respectfully submit that the motion of the Complainant ~~have~~ a rehearing ~~should~~ ^{be} granted, the decree of the Court of August 20, 1945, be set aside and in lieu thereof a decree denying the motion of the Respondents to dissolve the temporary injunction.

Respectfully submitted,

BEEBE & HALL

By: *John Lee*
Solicitors for the Complainant.

We hereby certify that a copy of the petition in this cause and of this brief was delivered to Messrs. Hybart and Chason, solicitors for the Respondents, on this the 17 day of September, 1945.

John Lee

7. That the decree of the Court recites that the property is in the Northwest quarter of the Southwest quarter of Section 11, Township 9 South, Range 3 East, while the evidence conclusively shows that it is in the Southwest quarter of the Northwest quarter of Section 11, Township 9 South, Range 3 East;

8. That the Court in its decree recites that it appears from the Surveyor's plat introduced in evidence, that the property assessed and paid on by the Complainant's predecessor in title for the year 1907, was in the Northwest quarter of the Southwest quarter of Section 11, Township 9 South, Range 3 East, and not in the Southwest quarter of the Northwest quarter of said Section, while as a matter of fact it cannot be determined from the said plat just what subdivision is covered; that the said penciled plat only shows the subdivision of a 40 acre tract, and does not locate it;

9. That there was an agreement between the Complainant and the Respondents, made in open Court, that the Respondents could go ahead and complete the removal of the pulp wood from the property in litigation.

BEEBE & HALL

By: 

Solicitors for the Complainant.

TWENTY-FIRST JUDICIAL CIRCUIT

OF ALABAMA

F. W. HARE, JUDGE

R. L. JONES, CIRCUIT SOLICITOR

LOUISE JOHNSON, COURT REPORTER

MONROEVILLE, ALABAMA

August 18, 1945.

Messrs. Beebe & Hall,
Messrs. Hybart & Chason,
Bay Minette, Alabama.

Gentlemen:-

IN RE: O. D. Nelson vs. S. M. Adams, Jr.,
Et al.

I am due you gentlemen an explanation of why the ruling was so long delayed in this case.

The hearing was had on June 13, 1944; Beebe & Hall filed their brief on July 25, 1944; Hybart & Chason filed their brief on February 22, 1945, and I told Miss Johnson to hold the file until we had received a reply brief from Beebe & Hall; she understood that I meant for her to take personal charge of the file, which she did and held the same in her room awaiting the reply brief from Beebe & Hall, which has never arrived. I forgot the file entirely until reminded of it a few days ago.

A determination of the legal questions involved was far from easy under the testimony in the case. I was, and still am, disposed to think that the carbon copy of the deed to complainant was admissible in evidence, and conferred sufficient title to authorize him to maintain the suit in the absence of a better title in the respondents.

With respect to the assessment of the taxes on the property for the year 1907, I accepted at its face value the testimony of the surveyor, Parker, to the effect that he could locate the land involved from the assessment, with the aid of the testimony of those living in the community. Under the legal axiom of quod certum est quod certum rendendi est it appeared that the taxes were legally assessed and paid for the year 1907. However, upon a careful study of the testimony, including the plat made by the surveyor, I am persuaded that the forty acres involved in this suit was not legally assessed for the year in question, since it appears that the land actually assessed was in a different forty from that involved in this suit. It was not contended by the complainant

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MONROEVILLE, ALABAMA

Page #2.

that the tax sale under which the respondents claim was void for any other reason than the taxes were properly assessed and paid for the year for which the land was sold. It follows that in my opinion the complainant has not made out a case entitling him to relief.

I have written the opinion in this case, and also this letter, so that all parties may know what considerations influenced me in arriving at the decree rendered, and may be better able to present the point to the Supreme Court should an appeal be taken.

Yours very truly,

F. W. HARE

O.D. Nelson
vs
~~R.P. Madams~~ et al

Motion for Rehearing

Filed 9/17/45
R. J. Madams
Register

O.W. Nelson
vs
S.M. Adams Jr et al

Brief
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STATE OF ALABAMA
BALDWIN COUNTY

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

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETINGS:

We command you, that without delay you execute this writ, and due return thereof how you have executed the same make to us at a term of our Court of Chancery to be held in Bay Minette, Alabama, in the manner and form required by law.

R.S. Luck
Register. *By Alice J. Luck*

TO S. M. ADAMS, JR., KIRKLAND TURPENTINE COMPANY,
MRS. JOSEPHINE KIRKLAND, ROGER LEE KIRKLAND, ROBERT
OTHO KIRKLAND, AND LUTHER JOSEPH KIRKLAND:

Whereas, O. D. NELSON has this day filed his Bill of Complaint in our said Court of Equity against S. M. Adams, Jr., Kirkland Turpentine Company, Mrs. Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland, praying, among other things, that S. M. Adams, Jr., Kirkland Turpentine Company, Mrs. Josephine Kirkland, Roger Lee Kirkland, Robert Otho Kirkland, and Luther Joseph Kirkland and each of them, or their agents, servants or employees, be enjoined from trespassing or entering upon the said lands described in the Bill of Complaint, to-wit:

Southwest Quarter of the Northwest Quarter of Section 11,
Township 9 South Range 3 East, in Baldwin County, Alabama.

And, Whereas, on said bill being exhibited to the Honorable F. W. Hare, Judge of the said Circuit Court, on the 21st day of February, 1944, he did order that upon complainant's entering into bond with sureties in the sum of \$250.00 and approved by the Register of this Court, payable to and conditioned according to law, writ of injunction issue out of said Court according to the prayer of said bill;

And Whereas bond has been given as required by said order;

These, therefore, are to command and strictly enjoin you and each of you from trespassing or entering upon the lands described in the Bill of Complaint, to-wit:

Southwest Quarter of the Northwest Quarter of Section 11,
Township 9 South Range 3 East, in Baldwin County, Alabama,

until further orders of this Court, and this you will in no wise omit, under penalty, etc/

WITNESS, R. S. DUCK, Register of the Circuit Court of Baldwin
County, Alabama, on this the 22nd day of February, 1944.

R. S. Duck
Register *by Alice J. Duck*

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O. D. NELSON

COMPLAINANT

VS.

S. M. ADAMS, JR., KIRKLAND
TURPENTINE COMPANY, MRS.
JOSEPHINE KIRKLAND, ROGER LEE
KIRKLAND, ROBERT OTHO KIRKLAND
AND LUTHER JOSEPH KIRKLAND
RESPONDENTS

WRIT OF INJUNCTION.

Executed Feb 27th 1944
by Serving Copy of
Writ of Injunction
on S M Adams Jr
Kirkland Turp Co, Mrs
Josephine Kirkland, Roger
Lee Kirkland, Robert
Otho Kirkland and
Luther Joseph Kirkland
Respondents
W R Stewart
Shiff

SEAL.

STATE OF ALABAMA,
COUNTY OF BALDWIN

I, Frank W. Walker, a notary public in and for the state and county aforesaid, hereby certify that LULA CALLOWAY, THOMAS A. CALLOWAY, GECHELIA STRINER, H. E. STRINER, ROSENA CALLOWAY, SPRUEL CALLOWAY whose names are signed to the foregoing conveyance, and who are known to me, acknowledge before me on this day that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of October, 1936.

I do further certify that on the _____ day of October, 1936, came before me the within named LULA CALLOWAY, GECHELIA STRINER, and ROSENA CALLOWAY, known to me to be the wives of THOMAS A. CALLOWAY, H. E. STRINER, and SPRUEL CALLOWAY, respectively, who being examined separate and apart from their husbands, touching their signatures to the within conveyance, acknowledged the same without constraint or threats on the part of their husbands.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this the _____ day of October, 1936.

STATE OF ALABAMA,
COUNTY OF MOBILE

I _____, a notary public in and for the state and county aforesaid, hereby certify that MARY A. NELSON, widow, EMMA STRINER, JOHN STRINER, J. R., whose names are signed to the foregoing conveyance, and who are known to me, acknowledge before me on this day that, being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of October, 1936.

Notary public Mobile County,
Alabama. My commission
expires _____

STATE OF _____
COUNTY OF _____

I _____, a notary public in and for the state and county aforesaid, hereby certify that RICHARD BRANDT, and THERESA BRANDT whose names are signed to the foregoing conveyance, and who are known to me, acknowledge before me on this day that, being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of October, 1936.

Notary public in _____
county, _____
My commission expires _____

I do further certify that on the _____ day of October, 1936, came before me the within names THERESA BRANDT known to me to be the wife of the within named RICHARD BRANDT, who, being examined by me separate and apart from her husband, touching her ~~signature~~ signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or threats on the part of her husband.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this the _____ day of October, 1936.

County _____ state, _____
My commission expires _____

Assessment of Taxes on Real Estate and Personal Property in the
County of Baldwin, Alabama, for year 1907.

Shell Banks--Beat No. 11,
Name of Parties Assessed--Estate W. Steiner by Jno. Steiner.
No. of Assessment--86,
Assessors Fee \$--,
Description: A lot of land bound on N by Jno Millers, on S by P.
Hanson lands, on W by Jno Millers, on E by Mrs.
Kruse lands, Tp. 9 S, R 3 E.
A certain piece of land known as W. Steiner's home-
stead, bound as follows: On N by H. Steiner's land,
on E by Jno. Plash lands and on S. by Mrs. Miller's
land and N by H. Steiner's land, Tp 9 S, R 3 E.
Improvements \$150.00.

No. acres improved,--10,
No. acres unimproved, 19,
Total No. Acres, --29,
Total assessed value of land & Impts,--\$295,
Household & Kitchen Furniture, Value of \$25.00,
Cattle, No 4, Value \$32.00,
Steamboats, etc., \$400.00,
Clocks, ect.-----,
Wagons, ect.-----,
Guns, etc.,-----,
Cattle, 6 head, value \$48.00,
Horses 1, value \$25.00,
All other Property Real & Personal not otherwise specified \$----,
Total value Personal Property \$474.00,
Total Value Real & Personal Property, \$769.00,
State Tax on Real & Personal Property, \$1.92²⁵
Special State Soldier Tax, \$.76⁹⁰
County Tax on Real & Personal Property, \$2.30⁷⁰
Special State School Tax, \$2.30⁷⁰
Special County Bridge Tax, \$.38⁴⁵
Special County School Tax, \$2.30⁷⁰
Special County Road Tax \$.76⁹⁰
Total State & County Tax on Real & Personal Property \$11.53⁵⁰
Building Fund \$.76⁹⁰.

THE STATE OF ALABAMA, |
COUNTY OF BALDWIN. | PROBATE COURT.

I, G.W. Robertson, Judge of the Probate Court and Custodian of
the Records and Files thereof, in and for said State and County,
do hereby certify, that the above and foregoing is a true, correct
and complete copy of an assessment for Taxation, made in the name of
-----Estate of W. Steiner by Jno Steiner-----for the tax year 1907,
as the same appears of record in said Court.

I further certify that the word "PAID" appears in writing on the
margin of the record of said Assessment.

In Testimony Whereof, I have hereunto set my hand and the seal
of the Probate Court of Baldwin County, Alabama, this the 12th day
of June, A.D., 1944.


Judge of Probate.

Assessment of Taxes on Real Estate and Personal Property in the
County of Baldwin, Alabama, for year 1907.

Shellbanks--Beat, No. 11,
Name of Parties Assessed--Andrew Mund,
No. of Assessment--41,
Assessors Fee \$-----,
Description: House and Lot on Bay John in W. E. Kennedy Grant,
bound on N by Jno. Morrison lands, on S & W by John
Plash lands and on E by Bay John Tp. 9 S, R 3 E,
NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 11, Tp 9 S, R 3 E;
Start at SE cor. of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ running N 1122 ft.,
W 1320 S until you bring a row of stakes in line
with stakes, thence E to a stake, thence S to
boundary line of land belonging to Andrew Muntz,
thence E to beginning Sec. 11, Tp 9 S, R 3 E.

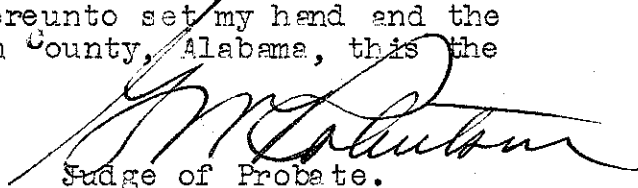
No. Acres Improved-----,
No. Acres Unimproved--63,
Total No. Acres--63,
Total Assessed value of land & Impts--\$308.00,
Household & Kitchen furniture, value of \$20.00,
Cattle--No. 4 head; value \$32.00,
Steamboats, etc.---\$500.00,
Cbcks, etc. \$5.00,
Wagons, etc., -- \$20.00,
Guns, etc.--\$10.00,
Cattle, 6--Value \$48.00,
Horses, 1--Value \$30.00,
All other property real & personal not otherwise specified, \$30.00,
Total Value Personal Property,--\$643.00,
Total Value Real & Personal Property,--\$951.00,
State Tax on Real & Personal Property, \$2.37⁷⁵,
Special State Soldier Tax,--\$.95¹⁰,
Special State School Tax,--\$2.85³⁰,
County Tax on Real and Personal property,--\$2.85³⁰,
Special County Bridge Tax,--\$.47⁵⁵,
Special County School Tax,--\$2.85³⁰,
Special County Road Tax, -\$.95¹⁰,
Total State and County Tax, Real & Personal Property \$14.26⁵⁰,
Building Fund, \$.95¹⁰,

THE STATE OF ALABAMA, |
COUNTY OF BALDWIN. | PROBATE COURT.

I, G.W. Robertson, Judge of the Probate Court and Custodian
of the Records and Files thereof, in and for said State and County,
do hereby certify, that the above and foregoing is a true, correct
and complete copy of an Assessment for Taxation, made in the name
of Estate of ----ANDREW MUND-----, for the tax year, 1907,
as the same appears of record in said County.

I further certify that the word "PAID" appears in writing on
the margin of the record of said Assessment.

In Testimony Whereof, I have hereunto set my hand and the
seal of the Probate Court of Baldwin County, Alabama, this the
12th day of June, A.D., 1944.


Judge of Probate.